



Planet Depos®
We Make It *Happen™*

Transcript of James Seery, Jr.

Date: August 5, 2022

Case: UBS Securities LLC, et al. -v- Highland Capital Management, L.P.

Planet Depos

Phone: 888.433.3767

Email: transcripts@planetdepos.com

www.planetdepos.com

Transcript of James Seery, Jr.
Conducted on August 5, 2022

1 (1 to 4)

1	1	1	3
2	IN THE UNITED STATES BANKRUPTCY COURT	2	A P P E A R A N C E S
3	FOR THE NORTHERN DISTRICT OF TEXAS	3	ON BEHALF OF THE PLAINTIFFS, UBS SECURITIES
4	DALLAS DIVISION	4	LLC:
5	-----X	5	ANDREW CLUBOK, ESQUIRE
6	In re	6	SHANNON McLAUGHLIN, ESQUIRE
7	HIGHLAND CAPITAL MANAGEMENT, L.P.,	7	LATHAM & WATKINS LLP
8	Debtor,	8	555 Eleventh Street, NW
9	-----X	9	Suite 1000
10	UBS SECURITIES LLC and UBS AG	10	Washington, District of Columbia 20004-1304
11	LONDON BRANCH, Plaintiffs, : Chapter 11	11	202-637-2200
12	vs. : Case No.:	12	ON BEHALF OF THE DEFENDANT, HIGHLAND CAPITAL
13	HIGHLAND CAPITAL MANAGEMENT, : 19-34054-SGJ11	13	MANAGEMENT, L.P.,:
14	L.P., :	14	JOHN MORRIS, ESQUIRE
15	Defendant. :	15	GREGORY DEMO, ESQUIRE
16	-----X	16	PACHULSKI STANG ZIEHL & JONES LLP
17	REMOTE VIDEOTAPED Deposition of James Seery, Jr.	17	780 Third Avenue
18	Friday, August 5, 2022	18	34th Floor
19	2:07 p.m.	19	New York, New York 10017-2024
20		20	212-561-7700
21		21	
22		22	ALSO PRESENT: Harold Rodriguez, Planet Depos Tech
23	Job No.: 458868	23	Enrique Casas, The Videographer
24	Pages 1-136	24	
25	Reported by: Angela (Angie) Shaw-Crockett, CRR, RMR	25	
2	2	4	4
1	REMOTE VIDEOTAPED Deposition of James Seery, Jr.,	1	I N D E X
2	held at:	2	Examination of:
3		3	Page
4		4	James Seery, Jr.
5		5	C O N T E N T S
6		6	MR. CLUBOK 7
7		7	E X H I B I T S
8		8	(Retained by the Planet Depos)
9	Pursuant to Notice, before Angela (Angie)	9	DEPOSITION EXHIBIT PAGE
10	Shaw-Crockett, CRR, RMR, Notary Public in and for the	10	Exhibit 69 UBS's First Request for Production 29
11	states of New York, New Jersey and Connecticut.	11	of Documents to Debtor Highland
12		12	Capital Management, L.P.
13		13	Exhibit 149 Debtor's Motion for Entry of an 33
14		14	Order Approving Settlement with UBS
15		15	Exhibit 150 Highland's Amended Responses and 36
16		16	Objections to UBS's Requests for
17		17	Admission
18		18	Exhibit 151 an email chain with the top email 38
19		19	dated August 5, 2020, from Mr. Seery
20		20	to Mr. Leventon, copying Scott
21		21	Ellington with the subject UBS
22		22	Supplemental Information Request
23		23	Exhibit 48 Settlement Analysis 44
24		24	Exhibit 152 Letter to HFP from January 20, 2009 46
25		25	Exhibit 153 February 4, 2009 letter to CDO 47
			Opportunity Fund Investors
			Exhibit 73 Email dated August 21, 2020 56
			Exhibit 154 Email thread 64
			Exhibit 155 Letter dated September 16, 2020 77

Transcript of James Seery, Jr.
Conducted on August 5, 2022

2 (5 to 8)

<p>5</p> <p>1 E X H I B I T S (CONT'D)</p> <p>2 (Retained by Planet Depos)</p> <p>3 Exhibit 156 Email exchange around January 2021 83</p> <p>4 Exhibit 57 Email exchange between Isaac Leventon and Chris Dunn 90</p> <p>5 Exhibit 2 Purchase agreement dated August 7, 2017 100</p> <p>6 Exhibit 3 Memo from Shawn Raver to Rick Swadley regarding the policy 106</p> <p>7 Exhibit 157 Email from Jason Post to Sarah Goldsmith that attaches a copy of the Highland Capital Management Compliance Manual 109</p> <p>8 Exhibit 158 Document October 2017 113</p> <p>9 Exhibit 159 Document dated January 10, 2020 114</p> <p>10 Exhibit 160 Document dated January 8, 2021 116</p> <p>11 Exhibit 161 April 28, 2021 letter 119</p> <p>12 Exhibit 162 First formal written response Mr. Seery received in response to his demand 121</p> <p>13 Exhibit 163 Letter that the director sent to James Seery personally and at Highland Capital Management as opposed to CDO Fund 122</p> <p>14 Exhibit 164 A letter from Walkers 125</p> <p>15 Exhibit 165 WALKERS two-page document 126</p> <p>16 Exhibit 167 Another email exchange that was in early February 2021 127</p> <p>17 Exhibit 166 Email exchange in late January of 2021 with Matt DiOrio and Mr. Romey and Mr. DiOrio 128</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>7</p> <p>1 are attending remotely.</p> <p>2 Would counsel please voice identify themselves and state who they represent.</p> <p>3 MR. CLUBOK: On behalf half of UBS, this is Andrew Clubok and Shannon McLaughlin from Latham~&~Watkins LLP.</p> <p>4 MR. MORRIS: And it's John Morris and Greg Demo from Pachulski Stang Ziehl & Jones for Highland Capital Management, L.P., and we're representing the witness today, Mr. Jim Seery, in his individual capacity.</p> <p>5 THE VIDEOGRAPHER: The court reporter today is Angie~Shaw representing Planet Depos.</p> <p>6 Would the reporter please swear in the witness.</p> <p>7 James Seery, Jr., having been duly REMOTELY sworn, testified as follows:</p> <p>8 EXAMINATION</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q Good afternoon. Could you introduce yourself please.</p> <p>11 A Hi, my name is James Seery.</p> <p>12 Q Mr. Seery, you are a licensed attorney in New York?</p> <p>13 A I am a licensed attorney. My registration</p>
<p>6</p> <p>1 PLANET DEPOS TECH: Thank you to everyone for attending this proceeding remotely, which we anticipate will run smoothly. Please remember to speak slowly and do your best not to talk over one another. Please be aware that we're recording this proceeding for backup purposes. Any off-the-record discussions should be had away from the computer. Please remember to mute your mic for those conversations. Please have your video enabled to help the reporter identify who is speaking. If you are unable to connect with video and are connecting via phone, please identify yourself each time before speaking. I apologize in advance for any technical-related interruptions. Thank you.</p> <p>2 THE VIDEOGRAPHER: Here begins disk number one in the remote video deposition of James Seery, Jr., in the matter of UBS Securities LLC, et al., versus Highland Capital Management, L.P., in the United States Bankruptcy Court for the Northern District of Texas, Dallas Division, case number 19-34054-SGJ11.</p> <p>3 Today's date is August 5, 2022. The time on the video monitor is 2:07 p.m. The remote videographer today is Enrique Casas representing Planet Depos. All parties of this video deposition</p>	<p>8</p> <p>1 is currently in hiatus or retirement or something like that, but I do pay every year my annual fee.</p> <p>2 Q Okay. And are you currently employed?</p> <p>3 A I am, yes.</p> <p>4 Q By whom?</p> <p>5 A I am the CEO of Highland Capital Management Limited Partnership.</p> <p>6 Q Can you very briefly walk through your education and prior job experience, just a summary version?</p> <p>7 A Undergraduate BA, JD. Started in real estate restructuring as a paralegal in '88, prior to graduating from law school in '90. I was a restructuring finance attorney from 1990 to 1999. I joined Lehman Brothers on the business side. At Lehman Brothers, I ran a distressed -- ultimately running the loan business globally, and then I -- after Lehman Brothers, we -- I went back to law for a couple of years, and then I went to run the restructuring business in New York. And then I went to a hedge fund that we started with some Mexican partners. And we were there from 2000 and -- beginning of 2012 until the end of 2017 or '18. And then I was at Guggenheim Securities building a credit business for a couple of years and became an</p>

<p style="text-align: right;">9</p> <p>1 independent director at Highland in January of 19 --</p> <p>2 2020, mid 2020. The court approved me as a CEO of</p> <p>3 Highland and Chief Restructuring Officer and took on,</p> <p>4 through the bankruptcy, and now the CEO of the</p> <p>5 reorganized entity.</p> <p>6 Q And what is the business of the reorganized</p> <p>7 entity?</p> <p>8 A The reorganized entity is an asset manager,</p> <p>9 but does own assets as well. And its business is part</p> <p>10 of a liquidating trust of which I am the</p> <p>11 liquidating -- or I am the claimant trustee. And in</p> <p>12 that capacity, we are monetizing the assets that</p> <p>13 Highland has in both its individual ownership capacity</p> <p>14 as well as its management of certain funds.</p> <p>15 Q You mentioned that Highland Capital</p> <p>16 Management is a limited partnership. Who is the</p> <p>17 general partner?</p> <p>18 A It's a newly-formed general partner that is</p> <p>19 owned by the claimant trust and all of the limited</p> <p>20 partnership interest in Highland are also owned by the</p> <p>21 claimant trust.</p> <p>22 Q And prior to the restructuring the general</p> <p>23 partner of HCM was Strand Advisors?</p> <p>24 A That's correct.</p> <p>25 Q And what was your connection to Strand</p>	<p style="text-align: right;">11</p> <p>1 A That's correct. I should point out that</p> <p>2 while I was at Lehman Brothers, Lehman Brothers did do</p> <p>3 business with Highland Capital Management.</p> <p>4 Q Okay. Had you met Jim Dondero before?</p> <p>5 A Yes.</p> <p>6 Q When was the last time --</p> <p>7 A Before the bankruptcy, meaning before</p> <p>8 this --</p> <p>9 Q Yeah, before the bankruptcy?</p> <p>10 A I think it would have been 2007 maybe once.</p> <p>11 Q Okay. So roughly a dozen years or so</p> <p>12 before the bankruptcy?</p> <p>13 A Correct.</p> <p>14 Q Okay. As independent director, what were</p> <p>15 your responsibilities?</p> <p>16 A As independent directors, the -- all three</p> <p>17 were to manage the enterprise Highland Capital</p> <p>18 Management in the bankruptcy, with Mr. Dondero having</p> <p>19 been removed as CEO and president. He maintains</p> <p>20 simply a portfolio management position, but we were</p> <p>21 doing it remotely. So it would be incorrect to think</p> <p>22 that we would have managed every aspect of Highland's</p> <p>23 business at the time when it had shared offices with</p> <p>24 Mr.~Dondero who was still on the premises running his</p> <p>25 other businesses. And because of the shared service</p>
<p style="text-align: right;">10</p> <p>1 Advisors?</p> <p>2 A Because it was a limited partnership, we</p> <p>3 came in as independent directors who became</p> <p>4 independent directors at Strand. Strand, as the GP,</p> <p>5 had the ability to control and manage the limited</p> <p>6 partnership of Highland Capital Management.</p> <p>7 Q Okay. And Highland Capital Management</p> <p>8 filed for Chapter 11 relief in late 2019?</p> <p>9 A October 16, 2019.</p> <p>10 Q You I think said that you thereafter,</p> <p>11 sometime in approximately January of 2020, became one</p> <p>12 of three independent directors of Strand Advisors?</p> <p>13 A That's correct. January 9, 2020.</p> <p>14 Q What connection does Strand have to the</p> <p>15 current entity?</p> <p>16 A None.</p> <p>17 Q Prior to 2020, had you ever done any work</p> <p>18 for Strand or HCM?</p> <p>19 A No.</p> <p>20 Q Now your appointment as independent</p> <p>21 director I think you said was approved by the court.</p> <p>22 But that was the product of an agreement between the</p> <p>23 committee of the unsecured creditors and Highland</p> <p>24 Capital Management's then president and CEO, Jim</p> <p>25 Dondero; is that correct?</p>	<p style="text-align: right;">12</p> <p>1 arrangements, Highland Capital employees performed</p> <p>2 numerous services for all of those other businesses.</p> <p>3 Q And who were -- were there anybody -- were</p> <p>4 there any employees of Highland who reported to the</p> <p>5 independent directors?</p> <p>6 A Directly or indirectly all of them did.</p> <p>7 Q Okay. And did that include Jim Dondero</p> <p>8 while he stayed on?</p> <p>9 A Really, technically I think yes, but he was</p> <p>10 a portfolio manager and he really didn't report to the</p> <p>11 board effectively. I think technically he was</p> <p>12 required to and the board could remove him, but he</p> <p>13 really didn't take direction from the board.</p> <p>14 Q Okay. And I think you testified that your</p> <p>15 role changed a little bit over time. You became the</p> <p>16 CEO and Chief Restructuring Officer in mid 2020?</p> <p>17 A That's correct.</p> <p>18 Q And, again, the bankruptcy court approved</p> <p>19 those appointments?</p> <p>20 A Yes.</p> <p>21 Q What led to your appointment of those</p> <p>22 positions? Strike that.</p> <p>23 What led to you being appointed to those</p> <p>24 positions?</p> <p>25 A It was really a determination by the board</p>

<p style="text-align: right;">13</p> <p>1 that a triamvirate was not the right way to try to 2 manage the business, particularly because of COVID. 3 We were working remotely and someone had to be the 4 point person. And based on my experience, I became 5 the de facto CEO and then appointed to the CEO and 6 chief restructuring role.</p> <p>7 Q And did your -- strike that.</p> <p>8 I think you have testified in the past 9 about your duties and responsibilities as CEO and CRO. 10 I'm going to ask you if I have this list generally 11 correct.</p> <p>12 Is it the case that as CEO and CRO, you 13 directed Highland Capital Management's day-to-day 14 ordinary course operations, oversaw Highland Capital 15 Management's personnel, made management decisions with 16 respect to HCM's training operations, directed HCM's 17 reorganization efforts, monetized HCM's assets, 18 oversaw the claims objection resolution process, and 19 led the process towards the confirmation of the 20 Chapter 11 plan?</p> <p>21 A That's correct, with the caveat that it was 22 done with the approval of the oversight board and 23 often in conjunction with the oversight board, as well 24 as with the management ex Mr. Dondero of Highland 25 Capital at the time.</p>	<p style="text-align: right;">15</p> <p>1 A Typically, the legal department dealt with 2 the foreign funds. That didn't mean they were all 3 lawyers, but they worked in the legal department.</p> <p>4 Q In any of your roles in connection with 5 Highland, have you had any responsibilities with 6 respect to an entity that we've referred to as 7 Multi-Strat?</p> <p>8 A Yes.</p> <p>9 Q And can you describe that please?</p> <p>10 A Multi-Strat is a fund that Highland formed, 11 that Highland is the portfolio manager of. So as the 12 CEO at Highland, I would be responsible for directing 13 the efforts of Highland with respect to its role as 14 the manager of Multi-Strat.</p> <p>15 Q Did you rely on anybody at Highland to 16 assist you in managing Multi-Strat?</p> <p>17 A Yes. All of them, the management team at 18 Highland were involved in the day-to-day operations of 19 Highland.</p> <p>20 Q And would that also include the legal 21 department?</p> <p>22 A Yes.</p> <p>23 Q What about CDO Fund. What were your 24 responsibilities in connection with CDO Fund, if any?</p> <p>25 A CDO Fund, we really didn't have any</p>
<p style="text-align: right;">14</p> <p>1 Q By the way, there was one other title that 2 I think you had. Foreign representative. Do you know 3 what that refers to?</p> <p>4 A I believe I was put in as foreign 5 representative so that I could also manage the foreign 6 entities that Highland had, to the extent that that 7 was required.</p> <p>8 (Reporter interruption.)</p> <p>9 MR. CLUBOK: Yeah, Jim, your voice was 10 fading out a little bit. When you moved closer, it 11 got better so if you could stay a little closer that's 12 much better.</p> <p>13 THE WITNESS: All right.</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q So with respect to foreign representatives, 16 were there particular countries that that was relevant 17 to?</p> <p>18 A Highland had subsidiaries in a number of 19 different countries. Generally operate funds, not 20 necessarily operating companies. But those included 21 Caymans, Bermuda, indirectly Guernsey, Singapore; and 22 Brazil.</p> <p>23 Q Were there Highland employees who 24 specifically dealt with the foreign funds like the 25 Cayman's funds?</p>	<p style="text-align: right;">16</p> <p>1 responsibilities. We believed that CDO Fund had no 2 assets and was simply a shell entity. And we believed 3 that, because that's what the legal department at 4 Highland told us. So we really didn't need to take up 5 any actions with respect to CDO Fund until 6 January 2021 when we discovered that what we'd been 7 advised was incorrect.</p> <p>8 Q Okay. Thank you. We'll come back to that 9 a little more. What about an entity that's referred 10 to as SOHC?</p> <p>11 A Similar. SOHC is a subsidiary of an entity 12 called HFP, Highland Financial Partners, which was 13 also a limited partnership. That entity, we actually 14 did not have control of, notwithstanding owning the 15 GP. So we had only -- certainly had all of the 16 ownership interest in that from the GP perspective 17 entity. The LPs were a mixture of various entities, 18 including complete third parties, but it had an 19 unusual structure with a board that was able to 20 control that entity completely.</p> <p>21 Most of the case, we didn't have any 22 dealings because, again, HFP was described to us as 23 being a completely valueless entity that had had lost 24 all value during the financial crisis and with respect 25 to the judgments that UBS had against its</p>

<p style="text-align: right;">17</p> <p>1 subsidiaries. So there really was nothing to do until 2 we really found out more about what would happen in 3 January of 2021. And then we realized we really 4 couldn't even control HFP because it was odd for its 5 structure. 6 Q Does HFP still have a board? 7 A It did have a board until relatively 8 recently. It had one member which was Jim Dondero. 9 And ultimately he indicated he resigned. And because 10 of the structure, we'd taken outside counsel's advice 11 on this. It's -- it would be really difficult to try 12 to replace that board because you need the limited 13 partners, all of whom are long gone. 14 Q I'm going back to this in more detail later 15 on in the deposition, but you've said a couple of 16 times with respect to CDO Fund and SOHC/HFP that you 17 were advised that these entities had lost all value 18 during the financial crisis and basically had no 19 remaining value. Who advised you of that? 20 A That would have been Mr. Leventon and 21 Mr. Ellington. I'm not sure if Frank Waterhouse, the 22 CFO, was involved in those discussions either. I'd be 23 guessing. I just don't recall him specifically. The 24 conversations with Ellington, Leventon were numerous 25 and specific. And then other members of the legal</p>	<p style="text-align: right;">19</p> <p>1 Q Okay. So even -- I guess before you became 2 appointed, you did some due diligence and you met with 3 members of the unsecured committee maybe, did due 4 diligence, and folks met with you and discussed the 5 matters relating to the bankruptcy with you? 6 MR. MORRIS: Objection to the form of the 7 question. 8 A That's correct. 9 Q Okay. 10 MR. CLUBOK: Yeah, thanks, John. Let me -- 11 I'll ask it with slightly more English if I can. 12 BY MR. CLUBOK: 13 Q So prior to being appointed as independent 14 director, fair to say you investigated some of the 15 facts relating to the bankruptcy and the potential 16 claims? 17 A Yes. 18 Q And in the course of those -- when did you 19 first start that conversation? 20 A Very shortly before I was appointed, so 21 sometime in the week of -- the week of or right before 22 January 9. 23 Q Okay. And during those -- and during those 24 discussions, had you -- you spoke with members of the 25 creditors' committee?</p>
<p style="text-align: right;">18</p> <p>1 department were in and around those conversations and 2 those would include JP Sevilla, Matt DiOrio and Katie 3 Irving. 4 Q Okay. Thank you. And, again, we'll come 5 back in a little more detail shortly. 6 I want to talk briefly about UBS's claim in 7 the bankruptcy, sort of why we're here. 8 You do recall that shortly after you were 9 appointed as independent director, the New York court 10 entered a judgment in UBS's favor for over a billion 11 dollars against CDO Fund and SOHC, correct? 12 A Yes, I do. 13 Q And did you -- were you aware that although 14 the judgment was entered February 10, 2020, there had 15 already been a decision that had been released, at 16 least to the parties, that anticipated that judgment 17 and that decision has been released in November of 18 2019? 19 A I was aware of that, yes. 20 Q So fair to say that by the time you 21 became -- or shortly after the time you became 22 appointed to the role of independent director, you 23 were aware of this impending judgment of over a 24 billion dollars? 25 A Before I became appointed.</p>	<p style="text-align: right;">20</p> <p>1 A I don't recall if I spoke to members. I 2 certainly spoke to creditors' committee counsel, some 3 of the members' counsel. 4 Q And did you also speak with representatives 5 of the debtor or -- 6 A Yes. 7 Q And fair -- did you learn about the 8 billion-dollar judgment from representatives of the 9 debtor prior to becoming an independent director? 10 A I don't recall from whom I learned it. 11 Q Okay. But it was well understood by you 12 that there was this impending billion-dollar judgment 13 even before you took on your role as independent 14 director? 15 A Absolutely. It was well understood by 16 everybody, meaning both the debtor representatives and 17 the committee representatives, as well as the 18 creditors' committee member representatives. 19 Q Okay. So once you assumed your role, fair 20 to say you -- one of your main responsibilities or 21 certainly a significant responsibility was to review 22 UBS's claim? 23 A That's correct. It was the entire 24 independent board, but there weren't that many claims. 25 And, obviously, there's two sides to the equation</p>

<p style="text-align: right;">21</p> <p>1 here. There's the assets and then there's the</p> <p>2 liabilities. And so understanding what the assets</p> <p>3 are, were, and what they could be, versus what the</p> <p>4 claim pool could be, was an essential and critical</p> <p>5 role for the independent board, including myself.</p> <p>6 Q And just to situate this, UBS's claim is</p> <p>7 ultimately filed on June 26, 2020. But fair to say</p> <p>8 that the independent board's initial investigation of</p> <p>9 that claim and the defenses and potential liabilities</p> <p>10 of the debtor and its funds began at least as early as</p> <p>11 January of 2020?</p> <p>12 A Absolutely. On January 9.</p> <p>13 Q As part of the effort to fully educate</p> <p>14 yourself about UBS's bankruptcy claim, did you ask</p> <p>15 people at Highland to provide you with detailed</p> <p>16 information regarding the history of the dispute?</p> <p>17 A Yes.</p> <p>18 Q And who did you instruct specifically with</p> <p>19 respect to gathering information so that you could</p> <p>20 fully understand UBS's claims?</p> <p>21 A The main people, Mr. Ellington and</p> <p>22 Mr. Leventon. Mr. Leventon's primary role, as far as</p> <p>23 I could tell, at Highland for the previous number of</p> <p>24 years, was dealing with the UBS claim.</p> <p>25 Q You came to understand that Mr. Leventon</p>	<p style="text-align: right;">23</p> <p>1 which were roughly 70 employees shy. And so once</p> <p>2 COVID came in in March, most of the Highland employees</p> <p>3 that were under -- HCMLP employees that were working</p> <p>4 remotely, most of the time Mr. Dondero's other half</p> <p>5 were coming in the office and Mr. Dondero was largely</p> <p>6 in the office is what we've been told. I didn't go to</p> <p>7 Dallas during the rest of that year.</p> <p>8 Q Fair to say that regardless of what</p> <p>9 Mr. Dondero actually did, you expected him to be fully</p> <p>10 engaged to assist in whatever ways you needed during</p> <p>11 that first half of 2020?</p> <p>12 A Certainly. He was -- he had the most to</p> <p>13 gain or lose by the bankruptcy and expected him to be</p> <p>14 active in assisting in his resolution.</p> <p>15 Q And based on the -- is it fair to say that</p> <p>16 the information that Mr. Ellington, Mr. Leventon, and</p> <p>17 others at Highland, including Mr. Dondero to the</p> <p>18 extent he provided some information about the UBS</p> <p>19 claim, helped you form your opinion upon the merits of</p> <p>20 that claim?</p> <p>21 A Certainly that was part of it. I did do a</p> <p>22 significant amount of independent work reviewing the</p> <p>23 documents, how the transaction was structured, the</p> <p>24 various margin calls, the restructuring of the</p> <p>25 transaction. And then my analysis of the documents</p>
<p style="text-align: right;">22</p> <p>1 had been the day-to-day point person for dealing with</p> <p>2 all things related to the UBS claim?</p> <p>3 A Yes. Other than settlement discussions,</p> <p>4 which were exclusive purview of Mr. Ellington at</p> <p>5 direction and in coordination with Mr. Dondero.</p> <p>6 Q Speaking of Mr. Dondero, I take it that he</p> <p>7 was also a source of information to the independent</p> <p>8 board regarding the UBS dispute?</p> <p>9 A He was but not very much. He was just</p> <p>10 dismissive of it and didn't provide any real detail.</p> <p>11 Q Did you --</p> <p>12 A At that time, in first half of 2020.</p> <p>13 Q Sure. And in the first half of 2020 while</p> <p>14 Mr. Dondero was still -- during the first half of</p> <p>15 2020, Mr. Dondero was still actively engaged with HCM</p> <p>16 as portfolio manager?</p> <p>17 A The answer is yes. It's unclear exactly</p> <p>18 what he was doing. And certainly managing for the</p> <p>19 first quarter the select fund until that would -- with</p> <p>20 Joe Sowin, of HCFMA, and (indiscernible) Rudolph. And</p> <p>21 then I stepped in with Mr. Sowin to manage out of the</p> <p>22 marching clauses with Jefferies. And I'm not sure</p> <p>23 what else Mr. Dondero was precisely doing. But</p> <p>24 Highland had -- Highland empire had two halves. It was</p> <p>25 the HCMLP half and then Mr. Dondero's other entities,</p>	<p style="text-align: right;">24</p> <p>1 was then further informed by Ellington, Leventon,</p> <p>2 Sevilla, the rest of the team, including the detailed</p> <p>3 presentations before COVID came in in the Highland</p> <p>4 office. Also, we had -- obviously had outside counsel</p> <p>5 involved in that analysis, as well.</p> <p>6 Q And in that first half of 2020, did you</p> <p>7 have any reason to doubt the legitimacy or the</p> <p>8 accuracy of the information that these former Highland</p> <p>9 Capital Management employees were providing to you</p> <p>10 regarding UBS's claims?</p> <p>11 A No. In fact, I was consistent with what</p> <p>12 they said all. All of them said similar things. They</p> <p>13 provided detailed structural information, they</p> <p>14 provided PowerPoint presentations on how the</p> <p>15 transactions worked, what the prior litigation history</p> <p>16 had been for the last -- I guess at that point</p> <p>17 seven-plus years. It's actually more like -- I think</p> <p>18 it's closer to ten years. And there's no reason for</p> <p>19 us to -- me or the rest of the board to doubt the</p> <p>20 specifics of the details they were providing.</p> <p>21 Q And in reliance of the information they</p> <p>22 provided you, along with the other work that you did,</p> <p>23 did you form an initial opinion about the merits of</p> <p>24 UBS's claim?</p> <p>25 A Yes.</p>

<p style="text-align: right;">25</p> <p>1 Q And what was that?</p> <p>2 A I didn't think it was a good claim against</p> <p>3 Highland. When I say "Highland," I mean HCMLP, the</p> <p>4 debtor.</p> <p>5 Q And that would include taking into account</p> <p>6 actions that Mr. Dondero may or may not have done on</p> <p>7 behalf of Highland?</p> <p>8 MR. MORRIS: Objection to the form of the</p> <p>9 question.</p> <p>10 A I'm not quite sure I understand.</p> <p>11 BY MR. CLUBOK:</p> <p>12 Q Okay. I'll ask again.</p> <p>13 So you said you didn't think it was a good</p> <p>14 claim against Highland. And in forming that opinion,</p> <p>15 I take it you considered whether or not Mr. Dondero's</p> <p>16 actions as the head of Highland -- to the extent you</p> <p>17 understood what his actions had been -- sorry. I</p> <p>18 think that was the end of the question, but I made it</p> <p>19 seem like I was pausing, so let me ask it again.</p> <p>20 A Okay. I got it.</p> <p>21 Q Yeah, I'll ask the question.</p> <p>22 A To the extent -- to the extent we were</p> <p>23 familiar with what his actions were, so what we knew</p> <p>24 of, meaning margin calls, trying to negotiate with</p> <p>25 UBS, and failing to meet margin calls, some of the</p>	<p style="text-align: right;">27</p> <p>1 of UBS's claims, you -- your opinion that UBS's claims</p> <p>2 may lack merit was formed in large part because of the</p> <p>3 information you received from the then Highland</p> <p>4 Capital Management employees?</p> <p>5 A Yeah. I would say material part. So the</p> <p>6 documents obviously and our analysis of the law and</p> <p>7 the pattern and practice in terms of dealing with</p> <p>8 the -- with the structure of the transaction, as well</p> <p>9 as our analysis of the ten years of litigation, which</p> <p>10 largely came from Mr. Leventon. That certainly helped</p> <p>11 form our opinion.</p> <p>12 Q And it's fair to say that you later came to</p> <p>13 learn more information that affected your view of the</p> <p>14 potential merits of the UBS claims?</p> <p>15 A That's fair, yes.</p> <p>16 Q And what specifically caused your change in</p> <p>17 the view about the merits of UBS's claims?</p> <p>18 A Well, two things, and they evolved.</p> <p>19 The first part was during a mediation in</p> <p>20 the early fall of 2020 and just hearing a</p> <p>21 third-party's perspective on some of the risks. In</p> <p>22 particular, the risks related to Multi-Strat and the</p> <p>23 fraudulent conveyance actions against Multi-Strat</p> <p>24 certainly helped inform my opinion and my opinion as</p> <p>25 well of the risks with respect to those claims.</p>
<p style="text-align: right;">26</p> <p>1 transactions, intercompany transactions between</p> <p>2 different affiliates and moving assets around, to some</p> <p>3 degree to try to satisfy some of the requirements of</p> <p>4 the structure, meaning the financing structure that</p> <p>5 was in place with UBS, we had considered those</p> <p>6 actions, yes.</p> <p>7 And we didn't see them as negative to our</p> <p>8 view of what the transaction documents required, what</p> <p>9 the law would require, and what the validity of UBS's</p> <p>10 claim was at the time.</p> <p>11 Q And you understood that part of UBS's</p> <p>12 claims included claims for breach of implied covenant</p> <p>13 of good faith and fair dealing?</p> <p>14 A That's correct.</p> <p>15 Q And you also understood that UBS's claims</p> <p>16 involved claims relating to alleged fraudulent</p> <p>17 transfers?</p> <p>18 A Yes.</p> <p>19 Q And you understood that UBS's claims also</p> <p>20 involved claims relating to alterego, specifically how</p> <p>21 Mr. Dondero may have commingled assets or treated</p> <p>22 different affiliates as one major affiliate for</p> <p>23 purposes of dealing with UBS?</p> <p>24 A Yes.</p> <p>25 Q And with respect to all of those elements</p>	<p style="text-align: right;">28</p> <p>1 And then in January of 2021, we learned</p> <p>2 that, in fact, notwithstanding what we'd been</p> <p>3 previously told, that the subsidiaries that you asked</p> <p>4 about earlier had had somewhere between 100- and</p> <p>5 \$300 million of assets and those assets were secretly</p> <p>6 moved out of those subsidiaries, even though they were</p> <p>7 counterparts of UBS. And those were secreted into the</p> <p>8 Cayman Islands in exchange for what we thought was a</p> <p>9 very strange contractual arrangement.</p> <p>10 Q And that information caused you to reassess</p> <p>11 the potential merits of UBS's claims for breach of</p> <p>12 implied covenant of good faith and fair dealing, its</p> <p>13 alterego claims, and its fraudulent conveyance claims,</p> <p>14 correct?</p> <p>15 A Yeah. Certainly the board which was active</p> <p>16 through the mediation. I think the other members of</p> <p>17 the board, it would be fair to say, were more cautious</p> <p>18 about the risks of the litigation perhaps than I was.</p> <p>19 And I think that we moved towards a settlement based</p> <p>20 upon those -- those views when we were in the process</p> <p>21 of reaching a settlement which was acceptable to all</p> <p>22 board members, including myself.</p> <p>23 We learned of these other facts which we</p> <p>24 then disclosed to UBS. And those certainly materially</p> <p>25 changed our -- my view. I think with the risks that</p>

<p style="text-align: right;">29</p> <p>1 we learned of in the mediation, it included some of</p> <p>2 the things, perhaps, that we found later. But they</p> <p>3 were more conjecture at that point as opposed to any</p> <p>4 hard facts.</p> <p>5 Q Is it fair to say that members of Highland</p> <p>6 Capital Management's legal team covered up, in your</p> <p>7 opinion, critical information that would have allowed</p> <p>8 you to fully assess the merits of UBS's claims?</p> <p>9 A I think I can now say that without any</p> <p>10 equivocation at all. It was covered up and it was</p> <p>11 coordinated and it involved several people, including</p> <p>12 Mr. Dondero, Mr. Ellington, Mr. Leventon, Mr. Sevilla,</p> <p>13 Ms. Irving. And it looks to me like Ms. Vitiello.</p> <p>14 Q Okay. Well, let's talk about that a little</p> <p>15 more specifically. If you could turn in your binder</p> <p>16 to Tab~1.</p> <p>17 Tab~1 has Exhibit 69.</p> <p>18 (Deposition Exhibit 69 was received and</p> <p>19 marked for identification, as of this date.)</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q Exhibit 69 are UBS's First Request for</p> <p>22 Production of Documents to Debtor Highland Capital</p> <p>23 Management, issued in connection with the</p> <p>24 restructuring. Do you see that?</p> <p>25 A Yes.</p>	<p style="text-align: right;">31</p> <p>1 requests?</p> <p>2 A Well, they came in through counsel and we</p> <p>3 began trying to respond to them with outside counsel</p> <p>4 and with the legal department.</p> <p>5 Q And is it true you tasked the in-house</p> <p>6 legal team with coming up with the substantive</p> <p>7 responses to UBS's discovery requests?</p> <p>8 A Certainly. I think the -- the specifics</p> <p>9 are that this was in and around the time of the</p> <p>10 mediation and it was a pretty voluminous request.</p> <p>11 So we sought to hone it to get the most</p> <p>12 critical information first and then we could expand</p> <p>13 out from that. But it was with the legal department's</p> <p>14 assistance that had been doing this with UBS for some</p> <p>15 time and, obviously, familiar with what Highland's</p> <p>16 systems and the information that's requested.</p> <p>17 Q And in words or substance without giving</p> <p>18 the exact words, but the gist of what you conveyed to</p> <p>19 the legal team was to prepare or provide information</p> <p>20 that would paint an accurate picture of the finances</p> <p>21 and the assets and liabilities of these funds dating</p> <p>22 back to the original dispute through the present,</p> <p>23 correct?</p> <p>24 A I don't know if that's fair. I would</p> <p>25 have -- I would have just said this is voluminous.</p>
<p style="text-align: right;">30</p> <p>1 Q And I want to draw your attention to</p> <p>2 requests eight and nine, which start -- looks like the</p> <p>3 pages may not may be not numbered, but you can flip</p> <p>4 forward until you get to Request 8?</p> <p>5 A Yes, I'm there.</p> <p>6 Q Here we go. We've got it up on the screen</p> <p>7 as well. And Request 8 asks for: All documents</p> <p>8 pertaining to the assets and liabilities of HFP, CDO</p> <p>9 Fund, and SOHC, including but not limited to -- and</p> <p>10 then it lists a number of specific requests related to</p> <p>11 this general request. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And you can see that it's clear that the</p> <p>14 information sought was being sought -- historic --</p> <p>15 being sought over a period that ranged from, you know,</p> <p>16 about a dozen years prior through the present,</p> <p>17 correct?</p> <p>18 A That's correct.</p> <p>19 Q And generally speaking, did you understand</p> <p>20 that what UBS was asking for was the complete</p> <p>21 financial picture of the assets of these funds -- HFP,</p> <p>22 CDO Fund, SOHC -- from the time of the original</p> <p>23 dispute through the present?</p> <p>24 A That's very clear, yes.</p> <p>25 Q And did you -- what did you do with these</p>	<p style="text-align: right;">32</p> <p>1 It's critical. Let's get them the most important</p> <p>2 stuff first, work with outside counsel on getting that</p> <p>3 done. The most important things would have been what</p> <p>4 I think are the obvious is the judgment debtor's CDO</p> <p>5 Fund, SOHC, and any of those subsidiaries, and put</p> <p>6 that information together and provide it.</p> <p>7 I wouldn't have been the one looking</p> <p>8 through each of items and then checking Highland's</p> <p>9 computer system to see what's available on its files.</p> <p>10 Q Sure. But your direction then was to</p> <p>11 provide the most important information as quickly as</p> <p>12 possible that UBS is legitimately seeking in</p> <p>13 connection with these requests?</p> <p>14 MR. MORRIS: Objection to the form of the</p> <p>15 question.</p> <p>16 A Yeah, better to say let's put together as</p> <p>17 much as of the information as we can, give it to</p> <p>18 outside counsel, and then let them determine what's</p> <p>19 the appropriate thing we're supposed to do. But we're</p> <p>20 going to have to produce some degree of information</p> <p>21 that's requested. It would have been -- I would not</p> <p>22 have thought there would have been in a way to say</p> <p>23 (indiscernible).</p> <p>24 BY MR. CLUBOK:</p> <p>25 Q Did you in words or substance instruct the</p>

<p>33</p> <p>1 legal team to not provide anything that was being 2 requested? 3 A No, never. 4 Q Did you -- 5 A But I wouldn't have had them provide it 6 directly to UBS, to Latham. I would have had them to 7 provide it to Pachulski. 8 Q Okay. Fair enough. So let me maybe just 9 rephrase it. 10 You tasked the legal team with gathering 11 the information so that you could turn it over to your 12 outside counsel who would then figure out what was 13 appropriate to provide from what was gathered by the 14 in-house legal team? 15 A Just to be very specific, I don't recall 16 the actual words or the conversation. But I typically 17 would do and I believe I did in this instance was say 18 to an attorney at Pachulski and to Isaac Leventon, 19 take a look at this, start working on these docs, 20 we're going to need to prepare something. 21 Q Let me -- actually, if you turn to Tab 52, 22 just to refresh your recollection. 23 (Deposition Exhibit 149 was received and 24 marked for identification, as of this date.) 25 BY MR. CLUBOK:</p>	<p>35</p> <p>1 Q Is it fair to say that you tasked the 2 debtor's in-house legal team with providing the 3 responses to UBS's discovery requests, at least to 4 your outside counsel, so that they could then pass 5 them on to UBS? 6 A That's correct. I think that's consistent 7 with what I said. It would have been the outside 8 working with the legal team. 9 Q Right. And who, in particular, did you 10 rely upon for providing the responses to UBS's 11 discovery requests? 12 A Specifically Mr. Ellington and 13 Mr. Leventon. 14 Q Was Stephanie Vitiello involved at all? 15 A I don't recall her being specifically 16 involved. I do see her on some of the emails and the 17 materials that I sent over which I took a skim of. 18 Q Did you ever, in words or substance, tell 19 Mr. Leventon to -- only to identify the assets that 20 were in the funds in May of 2009 and answer the 21 question what happened to those assets and where are 22 they today. Did you ever limit his task in that way? 23 A No, that would be absurd. 24 Q You came to believe -- well, after this 25 collection process and providing the documents to your</p>
<p>34</p> <p>1 Q This is the 9019 motion that the debtor 2 filed in connection with the settlement through UBS. 3 And I'd just refer you to paragraph 8. 4 MR. MORRIS: I'm sorry. Which exhibit are 5 you on? 6 MR. CLUBOK: It's Tab~52. It is the 7 Debtor's Motion for Entry of an Order Approving 8 Settlement with UBS. 9 MR. MORRIS: Yes, thank you. 10 MR. CLUBOK: It's 52 in your binder. 11 I guess -- do we have a deposition exhibit 12 number for this, Shannon? We'll get the next number. 13 We'll find out the next exhibit number that we should 14 use and we'll mark it as such. 15 BY MR. CLUBOK: 16 Q But for now, if you can look at the 9019 17 motion. 18 MR. CLUBOK: Oh, it looks like Exhibit 149. 19 We'll mark this as Exhibit 149. 20 BY MR. CLUBOK: 21 Q And Exhibit 149 is the Debtor's Motion for 22 Entry of an Order Approving the Settlement with UBS 23 Securities. 24 If you look at paragraph 8, page five. 25 A Yes.</p>	<p>36</p> <p>1 outside counsel, there was a production made to UBS 2 that I think was completed by -- about the end of 3 October 2020; is that correct? 4 A That's my recollection. I believe it was a 5 bit of a rolling production. 6 Q Right. And if you look at Tab~51, which -- 7 or the requests, Highland's Responses and Objections 8 to UBS's Requests for Admission, we'll mark that as 9 Exhibit 150. 10 (Deposition Exhibit 150 was received and 11 marked for identification, as of this date.) 12 BY MR. CLUBOK: 13 Q I think it's -- if you look at No. 33, at 14 least at some point whether you remember the date or 15 not, fair to say that Highland represented to UBS that 16 discovery was substantially complete in response to 17 this document request that's been identified as 18 Exhibit 69 [sic]? 19 A I believe that's -- 20 MR. MORRIS: I apologize for interrupting, 21 but I just do want to point out that this particular 22 document is dated September 2021. I don't know if you 23 want to think about your question at all, but this is 24 at least dated September 2021, which would have been 25 nine months after Mr. Ellington and Mr. Leventon left</p>

<p>37</p> <p>1 Highland.</p> <p>2 MR. CLUBOK: Right. I guess maybe my</p> <p>3 question was unclear.</p> <p>4 BY MR. CLUBOK:</p> <p>5 Q Back in October of 2020 while Ellington and</p> <p>6 Leventon were still at Highland and had responded to</p> <p>7 your tasking with respect to responding to the UBS</p> <p>8 document production, isn't it true that based on what</p> <p>9 they told you about the work they had done, Highland</p> <p>10 represented to UBS that it was substantially complete</p> <p>11 with its document production?</p> <p>12 A I believe that's correct and it would have</p> <p>13 been we've done all we can do (indiscernible).</p> <p>14 (Reporter clarification.)</p> <p>15 A I believe what we would have said and what</p> <p>16 I would have said and how counsel would have delivered</p> <p>17 to UBS's counsel, is that based on information that we</p> <p>18 received from Mr. Leventon and Mr. Ellington, we had</p> <p>19 completed discovery. We'd found all we could get that</p> <p>20 was responsive and that we had turned it over, to the</p> <p>21 extent it wasn't otherwise protected. And I don't</p> <p>22 recall whether there was any privilege or not.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q And fair to say that your view on whether</p> <p>25 Highland had substantially completed a response to</p>	<p>39</p> <p>1 this one better?</p> <p>2 MR. CLUBOK: Yes.</p> <p>3 THE VIDEOGRAPHER: We just lost our video</p> <p>4 image. Can we go off the record?</p> <p>5 THE WITNESS: Hold on. Let me get that.</p> <p>6 MR. CLUBOK: Yeah, let's go off the record.</p> <p>7 THE VIDEOGRAPHER: Okay. Stand by. We're</p> <p>8 going off the record. The time --</p> <p>9 THE WITNESS: It says I have video.</p> <p>10 MR. CLUBOK: I can see Jim. Enrique, you</p> <p>11 can't see Jim?</p> <p>12 THE VIDEOGRAPHER: Yes. But I just lost</p> <p>13 him so I unpin --he was unpinned from the screen, so I</p> <p>14 lost him for a second.</p> <p>15 MR. CLUBOK: Ah, okay.</p> <p>16 THE VIDEOGRAPHER: And since we're doing</p> <p>17 video, I need to have him pinned.</p> <p>18 THE WITNESS: Sorry about that on the fly.</p> <p>19 Hang on one second. I'm just going to grab some</p> <p>20 water.</p> <p>21 MR. CLUBOK: Okay.</p> <p>22 THE VIDEOGRAPHER: If you give me one</p> <p>23 second, Counsel, I'm just sorting something out here.</p> <p>24 Going back on the record. The time is</p> <p>25 2:55 p.m.</p>
<p>38</p> <p>1 UBS's discovery request changed after you got more</p> <p>2 information in 2021?</p> <p>3 A Yes.</p> <p>4 Q And fair to say that you ultimately learned</p> <p>5 that Mr. Ellington and Mr. Leventon's statements to</p> <p>6 you about the completeness or the production were</p> <p>7 false?</p> <p>8 A Yes.</p> <p>9 Q Okay. Let's talk about some other</p> <p>10 misrepresentations that Mr. Ellington and Mr. Leventon</p> <p>11 made. And I want to refer you to Tab~2, which is an</p> <p>12 email chain with the top email dated August 5, 2020,</p> <p>13 from you to Mr. Leventon, copying Scott Ellington,</p> <p>14 with the subject UBS Supplemental Information Request.</p> <p>15 A Give me that again?</p> <p>16 Q It's Tab~2 and it will be Exhibit 151.</p> <p>17 (Deposition Exhibit 151 was received and</p> <p>18 marked for identification, as of this date.)</p> <p>19 THE WITNESS: I'm going to try to switch</p> <p>20 screens and see if that helps.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q This one might be easier to deal with in</p> <p>23 hard copy because you have to kind of read up, but</p> <p>24 whatever it easiest for you, we'll try to make it.</p> <p>25 THE WITNESS: Let me know for the audio, is</p>	<p>40</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Mr. Seery, I want you to look at</p> <p>3 Exhibit~151, which is an email chain with the top</p> <p>4 email being a August 5, 2020 email from you to Isaac</p> <p>5 Leventon with a copy to Scott Ellington. Do you see</p> <p>6 that?</p> <p>7 A Yes.</p> <p>8 Q And, you know, the way email works, you</p> <p>9 have to go to the last page and work your way up.</p> <p>10 So I want to go to the last page of</p> <p>11 Exhibit 151. And you can see this chain starts with</p> <p>12 an email from someone named James Romey, R-O-M-E-Y, to</p> <p>13 Isaac Leventon, David Klos, with a copy to you and to</p> <p>14 Bradley Sharp. And the subject is: UBS Supplemental</p> <p>15 Information Request. Do you see that?</p> <p>16 A Yes.</p> <p>17 Q And who is James Romey?</p> <p>18 A James Romey was an employee of DSI</p> <p>19 Consulting who was the debtor's financial consultant.</p> <p>20 Q And in this email to Mr. Leventon and</p> <p>21 others, he says, Can you do a call this morning ASAP</p> <p>22 with Jim to discuss status of these materials. This</p> <p>23 is a high priority item. Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And, in fact, you respond shortly</p>

<p>41</p> <p>1 thereafter that you have another call at 11:00. 2 So you asked if the people would just get 3 on a call right then and there. It's 9:16 in the 4 morning. Do you see that? 5 A Yes. The -- I'm going to guess -- and this 6 is a guess -- that he might have been in Chicago 7 because this came first and the 9:16 came after. But 8 one, we would have been working for me telling these 9 guys to get on the phone now. 10 Q Okay. And in this -- later on in the email 11 chain, Isaac Leventon sends -- then he copies in Greg 12 Demo from your outside counsel, and he gives 13 information the about UBS's request for information. 14 Do you see that? 15 A Yes. 16 Q And among other things, Leventon -- and if 17 you go down to -- well, if you look in first bullet 18 point, he says some things and he says, UBS has all of 19 the documents to which the special master deemed it 20 was entitled. Do you see that? 21 A Yes. 22 Q Did Mr. Leventon ever tell you about a 23 discovery dispute relating to the financial condition 24 of the funds that was presented to special master 25 during the underlying UBS litigation?</p>	<p>43</p> <p>1 transaction through the present? 2 A Well, actually, initially, I took this as a 3 surprise, because I had previously been told that 4 there were no assets. So if there were assets, why do 5 we need to track them. 6 And then it evolved into, well, there had 7 been assets when there wasn't very much and we're 8 working our way through. And he was going to be 9 working hard and diligently to give us a schedule of 10 all of these assets and what happened to them. 11 But it was a surprise to me because the 12 prior representations were that they were shell 13 companies with no assets. 14 Q So was this the first time you learned that 15 their actually were at least some assets? 16 A Yes. 17 Q Then? 18 A Yes. 19 Q Mr. Leventon also says here that HFP and 20 CDO Fund had informed their investors in 2009 they had 21 zero net asset value. Do you see that? 22 A Yes. 23 Q I want to show you an Exhibit that's at 24 Tab~36 that's been marked as Exhibit 48. 25 (Deposition Exhibit 48 was received and</p>
<p>42</p> <p>1 A Not that I recall, no. 2 Q Did Mr. Leventon -- did you know what he 3 meant when he talked about this or just took him at 4 his word? 5 A I believe we had some brief discussion 6 about it and it had to do with what types of discovery 7 you could get prejudgment and post judgment in 8 New York. At least that was sought by -- I'm not a 9 New York litigator. My perspective and direction, 10 both with respect to this matter and others, was 11 produce everything. Let's get this done. 12 Q Okay. So Mr. Leventon then goes on to 13 reference HFP, which is the parent of SOHC and CDO 14 funds, having informed their investors in 2009 that 15 they had zero net asset value. Do you see that? 16 A Yes. 17 Q And then he says that he had been tracking 18 the assets through an SOHC and CDO fund and he was 19 putting together a report with supporting documents, 20 right? 21 A I see that, yes. 22 Q Did you take from this and from other 23 things that Mr. Leventon told you that he was working 24 diligently to provide a full picture of the assets at 25 SOHC, CDO Fund, HFP, from the time of their initial</p>	<p>44</p> <p>1 marked for identification, as of this date.) 2 BY MR. CLUBOK: 3 Q Have you seen this document before? 4 A I have, yes. 5 Q If you look at page three of this document, 6 this is a Settlement Analysis that Highland had done 7 long before you became involved, in which it talks 8 about the prospects for winning or losing the 9 litigation with UBS. Is that what you understand? 10 A I'm familiar with the document, yes. 11 Q Okay. And if you -- and basically in this 12 document that you've read before and you've seen that 13 they go through scenarios with respect to what would 14 happen if Highland wins its litigation with UBS or 15 loses its litigation with UBS, correct? 16 A That's correct. We discovered this 17 document on Mr. DiOrio's desk after he was terminated 18 for cause. We then, obviously, analyzed it. This was 19 in 2021 in February. We analyzed it and it goes 20 through a number of scenarios that if it wins or loses 21 different litigations what could happen. And it talks 22 about using assets that were secreted into the 23 Caymans, which I referred to before out of Sentinel, 24 to use those assets to effectuate certain settlements. 25 And ultimately as a strategy to leave the redeemer</p>

<p style="text-align: right;">45</p> <p>1 committee of the crusader fund, it basically -- I 2 think it says on an island or something to that effect 3 as its only defendant -- only material defendant if it 4 could effectuate settlements cheaply with other 5 litigants. 6 Q Fair to say back in 2020 when Mr. Leventon 7 was providing you information about responding to 8 UBS's information request, he did not share any 9 version of this document that's been marked as 10 Exhibit 48 with you, correct? 11 A Never saw this until long after 12 Mr. Leventon was terminated and Mr. Ellington was 13 terminated, and Mr. DiOrio was terminated. And then 14 we found it on Mr. DiOrio's desk, which then caused us 15 to search our computer system at Highland and found 16 it. 17 Q And the specific -- we're going to come 18 back to this document in a bit. But the specific 19 question I wanted to focus on here was just with 20 respect to Mr. Leventon's telling you that HFP had 21 told its investors in 2009 that it had zero net asset 22 value, isn't it the case that Highland had concluded 23 it would have net zero -- zero net asset value only if 24 Highland lost its litigation with UBS. Because if it 25 won its litigation with UBS, HFP was going to have</p>	<p style="text-align: right;">47</p> <p>1 marked for identification, as of this date.) 2 BY MR. CLUBOK: 3 Q And if you look at the next tab, 4 Exhibit 153, that is a February 4, 2009 letter to CDO 5 Opportunity Fund Investors. That is also what 6 Mr. Ellington refers to in Exhibit 151. 7 A It appears to be. That document I don't 8 recall if I'd seen before. 9 Q Okay. Well then turning back to the one 10 you do recall seeing before, Exhibit 152, if you look 11 at page four? 12 MR. MORRIS: Mr.~Klubok, apologies. What 13 tab is that in the binder? 14 MR. CLUBOK: Sorry. Tab~3. 15 BY MR. CLUBOK: 16 Q So Tab~3 is Exhibit 152, and it's that 17 letter to HFP investors from 2009 that Mr. Leventon 18 referred to when he told you that HFP had net zero 19 asset value. 20 If you go down to -- if you look at the 21 letter that he's referring to and you see on the 22 bottom of page four, it talks about the CLO financing 23 facility and it refers to the transaction with UBS 24 that was the subject of the litigation. Do you see 25 that?</p>
<p style="text-align: right;">46</p> <p>1 positive value as it says on page three of Exhibit 48? 2 A I'd forgotten about that section. It's 3 very clear that at the time this document was 4 completed, the belief that Highland had was that 5 Highland would have -- HFP would have positive value 6 if it wins the litigation and that would result in 7 massive tax liability for a number of individuals and 8 entities because they had already taken a material tax 9 loss. 10 Q Okay. So now let's turn back to 11 Mr. Leventon's email exchange with you on August 5, 12 2020. And, again, he's telling you about this letter 13 that was sent by HFP and then another letter that was 14 sent by CDO Fund. 15 If you look at Tab~3, a document that we 16 have marked as Exhibit 152, is that letter to HFP from 17 January 20, 2009 that he's referring to. Do you see 18 that? 19 A Yes. 20 (Deposition Exhibit 152 was received and 21 marked for identification, as of this date.) 22 BY MR. CLUBOK: 23 Q Have you seen that before? 24 A I have, yes. 25 (Deposition Exhibit 153 was received and</p>	<p style="text-align: right;">48</p> <p>1 A That's correct, yes. 2 Q And then if you look at the next page -- 3 and clearly as we know that that was a significant -- 4 at least many hundreds of millions at that time 5 potential liability. That was one of the reasons why 6 they, I guess, were telling investors they might have 7 net zero asset value, correct? 8 A Correct. But my experience -- unless there 9 was a judgment of a certain loss, we wouldn't tell 10 your investors there was no net asset value because 11 you don't take a worthless security deduction unless 12 you're absolutely certain that the security is 13 worthless. So doing that and at the -- and I only can 14 put this together now, doing that at the same time 15 while you're claiming that you don't owe UBS any money 16 is highly improper in my opinion. 17 Q And that's because if they really didn't 18 owe UBS any money, they wouldn't have had a zero net 19 asset value, correct? 20 A That's what that next deck says. And it 21 would have -- it could have -- anyone who followed 22 the -- I don't know if it's advice, but the implicit 23 advice in this email and took a worthless security 24 deduction, would find themselves with a significant 25 tax problem. I'm not very familiar with it, but</p>

<p style="text-align: right;">49</p> <p>1 familiar enough to know from my experience, you don't 2 take one unless you're certain it's worthless. 3 Q And in the conclusion section of the letter 4 to HFP investors, it's been marked as Exhibit 152, in 5 the middle -- or the second paragraph says, "Due to 6 events and circumstances described in this letter, 7 we've concluded as of December 31, 2008, it's likely 8 that all future inflows of cash to HFP will be used to 9 pay creditors and there's no prospect of return to 10 holders of HFP units," correct? 11 A Correct. 12 Q Are you aware of HFP ever paying a single 13 penny to UBS with respect to the judgment that UBS has 14 obtained? 15 A Not that I'm aware of, no. 16 Q All right. So let's turn back to 17 Mr. Leventon's letter to you. After talking about 18 the -- and by the way, did Mr. Leventon bring any of 19 this information to your attention in any words or 20 substance regarding the true nature of HFP's assets 21 and how the UBS litigation very directly affected 22 that? 23 A No, not at all and in fact quite the 24 opposite. It was -- the information that was brought 25 was that there -- there were no assets and that UBS's</p>	<p style="text-align: right;">51</p> <p>1 this information in the bullet points here and 2 specifically with respect to SOHC, he says that it had 3 295,000 in cash and all since paid in legal fees. Do 4 you see that? 5 A Yes. 6 Q And then he says there are four worthless 7 securities and basically nothing else, correct? 8 A Correct. Although there's this -- there's 9 a section there with the five assets remain in the 10 fund. Three with zero value as well as 11-million in 11 Greenbriar CLO equity, and some amount of Multi-Strat 12 equity. I'm trying to figure that out. That 13 raised -- that raised concerns. 14 Q But that -- but that is -- and I was going 15 to turn to that next. That's CDO Fund. His next 16 bullet point he talks about what's in CDO Fund as 17 opposed to SOHC? 18 A Correct, correct. 19 Q Yeah. And for CDO Fund now, he tells you 20 that there were ten assets as of the end of 2011, plus 21 1.2 million in cash. Do you see that? 22 A Yes. 23 Q And he then says that some of the assets 24 were sold to pay legal fees. There's another asset 25 that's a claim in Lehman bankruptcy, the claims he's</p>
<p style="text-align: right;">50</p> <p>1 claims were against shell companies with no assets. 2 In fact, the initial view description was 3 they never had any assets because they were all pushed 4 into the warehouse. And if they had some, it would -- 5 it was only because they were transiting towards the 6 warehouse from the warehouse. 7 Q And you later came to learn that was all 8 lies. 9 A That's correct. 10 Q If you look back at Mr. Leventon's email on 11 August 5, 2020, 2:54 p.m. his time, he says that he's 12 been tracking the assets through on SOHC and CDO Fund 13 and he was putting together a report with supporting 14 documents. Do you see that? 15 A Yes. 16 Q Now fair to say that you've come to learn 17 since, but didn't know then, that one of the 18 significant assets SOHC had at the time was a hundred 19 million dollar insurance policy? 20 A That's correct, yes. 21 Q Did Mr. Leventon in any way, shape or form 22 tell you anything about this insurance policy which 23 SOHC had a claim to? 24 A Never. 25 Q So Mr. Leventon gives you this -- rest of</p>	<p style="text-align: right;">52</p> <p>1 trying to track down. And then he says there's five 2 assets remaining that -- three of which have zero 3 value and then the Greenbriar equity and some amount 4 of Multi-Strat equity. Do you see all of that? 5 A Yes. 6 Q Now did he tell you why -- when he says the 7 CDO Fund had ten assets as of the end of 2011, did you 8 take that to mean that there were no further assets of 9 CDO Fund post 2011? Is that a natural reading of 10 that? 11 A I think that's a natural reading, but I was 12 more -- I recall getting this and talking with him and 13 saying what are you talking about. You told me these 14 were shell entities with no assets. And I took that 15 to mean back to 2009, which I had previously -- he had 16 previously told me was the case. 17 Q I see. 18 A And now you're telling me there were some 19 assets post 2009. What were they? What happened to 20 them? And I got this explanation about legal fees and 21 this is -- we treated SOHC and CDO Fund, as I did, 22 pretty much the same, they were jointly and severally 23 liable on the UBS obligation. 24 And then part of it was this Greenbriar. 25 And I wanted to know what the heck that was, as well</p>

<p>53</p> <p>1 as what do you mean they had an interest in 2 Multi-Strat and do they still have. 3 Q So before this, he had previously lied to 4 you by saying there just are no assets at all in 5 these -- 6 A Correct. 7 Q -- correct? 8 Now he's admitting there are some assets. 9 Did he explain why he had previously said there were 10 no assets at this time? 11 A No. He's not somebody who's a clear 12 speaker. I think that's often purposeful. 13 Q Did he ever in words or substance ever say 14 that any CDO assets were used to procure an insurance 15 policy? 16 A No, never. 17 Q All right. One sec. If you'd move up the 18 email chain, you can see that on that same day several 19 hours later Leventon provides additional information 20 about CDO Fund and SOHC. Do you see that? 21 A Yes. 22 Q And he now tells you that the current 23 assets are 32 million, comprised of 11 million in 24 Greenbriar and 21 million in Multi-Strat. Do you see 25 that?</p>	<p>55</p> <p>1 and they were going to dig into it and come back to 2 me. 3 Q And what, if anything, did he tell you 4 about the Multi-Strat asset? 5 A Very similar. It used to be there. We 6 started to trying to look to see was it an ownership 7 interest in one of the feeder funds or an ownership 8 interest in a subsidiary of Multi-Strat. Because it 9 wasn't listed as a limited partner at Multi-Strat, 10 meaning CDO Fund. 11 Q You've come to learn that by approximately 12 2016 or early 2017 there were roughly 300 million 13 face-value assets with a valuation of over 100 million 14 of market value spread amongst CDO Fund and the SOHC 15 HFP family of funds, correct? 16 A That's correct, yes. 17 Q That information was clearly omitted from 18 Mr. Leventon's reports to you, correct? 19 A Yes. 20 Q Is that kind of information the kind of 21 information you fully expected Mr. Leventon to have 22 disclosed to you had you known about it? 23 A Not only would I have expected it, it would 24 have been his duty as a senior lawyer for the company. 25 Q He was -- he was a lawyer for the company</p>
<p>54</p> <p>1 A Yes. 2 Q And he talks about an asset list from 2009 3 to 2011. And then he talks about cash from 2012 to 4 2015. Do you see that? 5 A Yes. 6 Q And its claimed that from 2012 to 2015, the 7 fund had 12.5 million in cash and then they paid out 8 16.6 million in legal fees. Do you see that? 9 A Yes. 10 Q Again, any information at all about any 11 other assets the CDO Fund had post 2011? 12 A No. And this led to discussion because it 13 was quite shocking that there had been that much cash 14 there spent for legal fees defending -- being 15 defensible, frankly, with respect to CDO Fund and 16 SOHC. And while I believe Highland's defenses had 17 merit, that cause should have been borne by Highland, 18 not these two counterparties. 19 And then I wanted to know what the heck 20 they were talking about with 11 million Greenbriar CLO 21 and 21 million Multi-Strat and where was it. 22 Q And what, if anything, did he tell you 23 about Greenbriar CLO? 24 A They had to look. He wasn't sure. They 25 couldn't find it listed as an asset of these entities,</p>	<p>56</p> <p>1 at that time. Do you feel like he made material 2 omissions to you regarding the state of CDO Fund and 3 SOHC's assets? 4 A Clearly. 5 Q If you could turn to Tab~5. We have 6 deposition Exhibit 73. 7 (Deposition Exhibit 73 was received and 8 marked for identification, as of this date.) 9 BY MR. CLUBOK: 10 Q And this is another email he sends to you 11 a couple of weeks later, copying Scott Ellington and 12 Greg Demo and James Romey. 13 And in the email at the top he says, "All, 14 I do not want to include this in the UBS package until 15 we discuss, but please see attached showing the 16 Multi-Strat position being written off." Do you see 17 that? 18 A Yes. 19 Q And if you look at -- there may be a blue 20 sheet, but we're going to mark -- but there's -- 21 there's an attachment to this email. Actually there's 22 two attachments to this email that we've got behind 23 blue sheets in your binder. 24 And these are attachments that he included 25 with his cover email that's been marked as Exhibit 73.</p>

<p>57</p> <p>1 Do you see that?</p> <p>2 A Yeah, I recognize it.</p> <p>3 Q And if you look at the first attachment,</p> <p>4 this purports to show that -- and by the way, what</p> <p>5 we've been calling Multi-Strat used to be called</p> <p>6 Highland Credit Opportunities CDO, correct?</p> <p>7 A That's correct. And Multi-Strat is a</p> <p>8 number of feeder funds with similar confusing names</p> <p>9 but also subsidiaries where it's held certain assets.</p> <p>10 Q But when Leventon in his cover e-mail talks</p> <p>11 about Multi-Strat and then he gives you documents</p> <p>12 showing activity and credit opportunities, you all</p> <p>13 have a shared understanding. You're talking about the</p> <p>14 same entity, correct?</p> <p>15 A That is the same entity, correct.</p> <p>16 Q Okay. So with respect to the first</p> <p>17 attachment to Exhibit 73, that purports to show -- and</p> <p>18 it's may be hard to read. We've tried to give you a</p> <p>19 bigger version.</p> <p>20 A That's okay. I got it.</p> <p>21 Q And Shannon can try to blow it up on the</p> <p>22 screen. But that purports to show that all of the</p> <p>23 interest in credit opportunities/Multi-Strat were</p> <p>24 written off in August 11, 2017. Do you see that?</p> <p>25 A That's correct.</p>	<p>59</p> <p>1 gone. It was written off. And the only explanation</p> <p>2 that I recall was something along the lines of it was</p> <p>3 an improper entry. And what it shows is in the next</p> <p>4 exhibit that it was traded. But it was -- and we had</p> <p>5 discussion about well, was it actually traded, no.</p> <p>6 That's just the way we wrote it off. It was</p> <p>7 improperly listed as their asset.</p> <p>8 And that obviously -- or maybe not</p> <p>9 obviously, but to me that engendered a lot of</p> <p>10 questions. And so I pressed them on how this could</p> <p>11 actually be the case. I even raised this to Dondero,</p> <p>12 who told me that the Greenbriar interest -- this is</p> <p>13 the Multi-Strat interest. So this one is different.</p> <p>14 The Multi-Strat interest was just a -- some</p> <p>15 kind of mistake, that it shouldn't have been there.</p> <p>16 And so it shows that a trading entry, that is just a</p> <p>17 way to write it off and it says that there's no</p> <p>18 counterparty basically.</p> <p>19 Q By the way, you're looking at the second</p> <p>20 attachment --</p> <p>21 A Correct.</p> <p>22 Q -- to the email that Leventon sent you</p> <p>23 which we've marked as Exhibit 73?</p> <p>24 A Yes.</p> <p>25 Q And that's a document from WSOWeb?</p>
<p>58</p> <p>1 Q Now those -- you know, you knew at the time</p> <p>2 that that quantity of interest in Multi-Strat actually</p> <p>3 had pretty significant value, correct?</p> <p>4 A Yes.</p> <p>5 Q And did Mr. Leventon give you any</p> <p>6 explanation as to why the CDO Fund quote would have,</p> <p>7 quote, written off that valuable asset back in August</p> <p>8 of 2017?</p> <p>9 A Not that I recall. The -- it was with</p> <p>10 specificity. The discussion was that there must have</p> <p>11 been some kind of mistake. It would have -- if they</p> <p>12 had been an owner of Multi-Strat, it would have been</p> <p>13 clearly set forth in -- in the log or ledger that we</p> <p>14 had with respect to who are the LPs of Multi-Strat.</p> <p>15 It wasn't there.</p> <p>16 This email engendered -- it was -- it came</p> <p>17 from the prior set of emails that he's talking about</p> <p>18 we have this interest in Multi-Strat, found it. Where</p> <p>19 is it? Because if CDO Fund had an interest in</p> <p>20 Multi-Strat, that might help us facilitate a</p> <p>21 settlement with UBS. Because right now we're offering</p> <p>22 nothing.</p> <p>23 Couple of weeks -- I forget the exact dates</p> <p>24 from the last email, but it took a little time to come</p> <p>25 back to me and say, Oh, we've hunted it down and it's</p>	<p>60</p> <p>1 A Yes.</p> <p>2 Q Is that Highland's trading system?</p> <p>3 A That was one of the systems. So this is</p> <p>4 the Wall Street office, which was the system that</p> <p>5 Highland had.</p> <p>6 Q And so this would have been a document that</p> <p>7 was prepared back in it says August 21, 2020. Well I</p> <p>8 don't know -- maybe that was the day it was printed</p> <p>9 out. Was that the day it was printed out?</p> <p>10 A I believe that's the day it was printed</p> <p>11 out. It says the entry is from August 11, 2017.</p> <p>12 Q Okay. So back in August 11, 2017, Highland</p> <p>13 used its trading system to record a supposed writeoff</p> <p>14 of this significant interest in Multi-Strat, right?</p> <p>15 A Correct.</p> <p>16 Q And by the way, by significant, I think</p> <p>17 that interest today is somewhere in the high 20 low</p> <p>18 30 million-dollar range, correct?</p> <p>19 A All -- and including all distributions on</p> <p>20 it, it would have been somewhere in the 20s I believe.</p> <p>21 Q Somewhere in the 20 million-dollar range?</p> <p>22 A But I don't know what it would have been</p> <p>23 worth in 2017.</p> <p>24 Q Sure. You've come to learn that, in fact,</p> <p>25 this interest wasn't just written off because it was</p>

<p style="text-align: right;">61</p> <p>1 some mistaken fiction, correct?</p> <p>2 A Correct.</p> <p>3 Q You've come to learn that in fact this</p> <p>4 interest that CDO Fund held in Multi-Strat was</p> <p>5 purportedly transferred to Sentinel as part of the</p> <p>6 overall effort to purchase an insurance policy for the</p> <p>7 UBS litigation, correct?</p> <p>8 A Yeah, we learned that in first quarter of</p> <p>9 '21.</p> <p>10 Q Right. So not until months after</p> <p>11 Mr. Leventon is telling you this is just a writeoff</p> <p>12 because of a mistake, correct?</p> <p>13 A Oh, yeah. Even after Mr. Leventon was</p> <p>14 fired, he never shared this information with us. He</p> <p>15 shared the information in his email, but it's clearly</p> <p>16 wrong if not fraudulent.</p> <p>17 Q Fair to say it was a material omission --</p> <p>18 to put it mildly -- for Mr. Leventon to not explain --</p> <p>19 strike that.</p> <p>20 I think this is actually a lie to represent</p> <p>21 that the CDO interest in Multi-Strat had been written</p> <p>22 off as opposed, used as part of a purchase of an</p> <p>23 insurance policy. Is that fair?</p> <p>24 A I think that's a fair characterization. If</p> <p>25 one creates a description of something that is</p>	<p style="text-align: right;">63</p> <p>1 back in August of 2017?</p> <p>2 A That's fair. We'd never been -- and I had</p> <p>3 never been informed of any such transfers or even the</p> <p>4 existence or name of Sentinel until the first quarter</p> <p>5 of '21 when we found it on our own.</p> <p>6 Q Did you ever -- strike that.</p> <p>7 Had you known about what really happened to</p> <p>8 CDO Fund's interest in Multi-Strat, would you have</p> <p>9 told UBS about it at the time?</p> <p>10 A Yes.</p> <p>11 Q And by the way, is it your understanding</p> <p>12 that those interests, that are identified here as</p> <p>13 supposedly being written off, are the same interests</p> <p>14 that are now being restrained pursuant to the</p> <p>15 temporary injunction that's been issued by this court?</p> <p>16 A Yes. These interests are worth north of</p> <p>17 \$20 million.</p> <p>18 Q And these interests, which instead of being</p> <p>19 written off were purportedly transferred to Sentinel,</p> <p>20 are now only being restrained because of this court's</p> <p>21 actions, correct?</p> <p>22 A That's correct.</p> <p>23 Q Otherwise, is it fair to say that without</p> <p>24 the court's injunction, you might be required to</p> <p>25 redeem the interest in Multi-Strat by turning over the</p>
<p style="text-align: right;">62</p> <p>1 materially false and knowingly does so, whether --</p> <p>2 whether -- without disclosing the actual events, I</p> <p>3 think that that description could be fairly</p> <p>4 characterized as a lie.</p> <p>5 Q And by the way, Mr. Leventon has copied</p> <p>6 Mr. Ellington on this, correct?</p> <p>7 A Yes.</p> <p>8 Q Mr. Ellington, you've come to learn, is a</p> <p>9 part owner, an ultimate beneficial owner of Sentinel,</p> <p>10 correct?</p> <p>11 A That's correct.</p> <p>12 Q And when Mr. Ellington was copied on this</p> <p>13 email where Mr. Leventon provides you this false</p> <p>14 information about the Multi-Strat interests that were</p> <p>15 previously held by CDO Fund, did Mr. Ellington in any</p> <p>16 words or substance correct Mr. Leventon's</p> <p>17 misrepresentations?</p> <p>18 A No. And Mr. -- I don't recall the specific</p> <p>19 conversations. Maybe something will trigger that,</p> <p>20 something you show me may trigger that. But</p> <p>21 Mr. Ellington was involved in these discussions.</p> <p>22 Q And he certainly never in words or</p> <p>23 substance told you that CDO Fund's interest in</p> <p>24 Multi-Strat and other assets had been, in fact,</p> <p>25 transferred or tried to be transferred to Sentinel</p>	<p style="text-align: right;">64</p> <p>1 value of the restrained interest to Sentinel?</p> <p>2 A Yes, we have the full amount of cash</p> <p>3 necessary to redeem this interest and redeem all</p> <p>4 similar interest.</p> <p>5 Q Okay. Let's turn to Tab-6, which has been</p> <p>6 marked as Exhibit 153 [sic].</p> <p>7 (Deposition Exhibit 154 was received and</p> <p>8 marked for identification, as of this date.)</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q And this is another email thread that the</p> <p>11 top thread is August 21, 2020 from Mr. Leventon to you</p> <p>12 and others including your outside counsel and copying</p> <p>13 Scott Ellington. Do you see that?</p> <p>14 A Yes. This is the same day as the prior set</p> <p>15 of emails, but it's in the morning.</p> <p>16 Q It's in the morning, okay.</p> <p>17 And if you go again to the first email in</p> <p>18 the chain, which you have to go to the end of the</p> <p>19 documents, you can see that Mr. Romey had sent an</p> <p>20 email to Mr. Leventon which he puts importance,</p> <p>21 "high."</p> <p>22 And he says, "Before we give anything to</p> <p>23 UBS today, we need to track down what the Highland</p> <p>24 Credit Opportunities CDO Limited partner [sic]</p> <p>25 interest in Multi-Strat means and how it's accounted</p>

<p>65</p> <p>1 for in Multi-Strat's books, i.e., whether it's part of 2 the existing redemption group or it has -- or how it 3 has any remaining interest in the fund. Or if I'm 4 misunderstanding something, please let me know ASAP." 5 Do you see that?</p> <p>6 A Yes.</p> <p>7 Q And if you go up the chain, you see an 8 email from Greg Demo where -- this is at the bottom of 9 the page that Bates labeled 38893.</p> <p>10 You see Mr. Demo says, "The confusion that 11 we're having is that the assets shown on the 12 worksheets we got from Isaac says that Highland's CDO 13 Opportunity Master Fund has a 21.5 million limited 14 partner interest in Multi-Strat." Do you see that?</p> <p>15 A Yes.</p> <p>16 Q And he goes onto say, "So the issue you 17 raise exactly the issue we're trying to figure out. 18 Going off the org chart, I thought this entity was 19 100 percent owned by MSCF. We're trying to figure out 20 what the 26 million-dollar asset on CDO Fund's books 21 means." Do you see that?</p> <p>22 A Yes.</p> <p>23 Q And Isaac then responds to that by saying 24 "Dave, I will call you to figure this out." Do you 25 see that?</p>	<p>67</p> <p>1 A Yes.</p> <p>2 Q And that's where Mr. Ellington then sends a 3 pretty lengthy email. And this may have been what you 4 were referring to when you said you remember him 5 weighing in. And I'll you take a minute to look at 6 Mr. Ellington's response.</p> <p>7 A Yeah, he made it on the 6th as well. And 8 I'm familiar with the response. So he was active in 9 these discussions.</p> <p>10 Q And he, again, is pushing back on an actual 11 call about this to get it sorted out. Do you see 12 that?</p> <p>13 A Yes.</p> <p>14 Q And he claims that "we are searching for 15 documents and records that were created as far as back 16 as 15 years ago," right?</p> <p>17 A Yes.</p> <p>18 Q And then there's a lot of statements 19 that -- fair to say were designed the make you believe 20 that he's doing everything possible and trying his 21 best but it's just too hard to figure this all out?</p> <p>22 A Correct. And that he's -- he's the one who 23 has expertise and he's digging in and he's talked to 24 UBS about it, he's talked personally to you about it, 25 he's talked to KPMG about it and it's a ton of work</p>
<p>66</p> <p>1 A Yes.</p> <p>2 Q And Mr. Romey asks for a status check and 3 Leventon then says there's no prerequisite to deliver 4 materials to UBS in satisfaction of their concerns. 5 And then --</p> <p>6 MR. MORRIS: I'm sorry. Where is that 7 email?</p> <p>8 MR. CLUBOK: Sorry. I'm working my way up 9 the chain. So there's an email on August 6, 2020, 10 5:05 p.m., where Leventon basically says that this is 11 isn't a prerequisite to delivering materials to UBS.</p> <p>12 And Scott Ellington responds at 6:08 p.m., 13 saying "Isaac and me were instructed by Jim Seery to 14 get this UBS deliverable handled." He says, "I was 15 just on the phone with Isaac when this email came 16 through. Don't see how this is urgent, especially 17 relative to UBS request. We'll get to this when it is 18 a priority." Do you see that?</p> <p>19 A Yes.</p> <p>20 BY MR. CLUBOK:</p> <p>21 Q And then Mr. Demo, on August 15, writes to 22 Scott and Isaac and he says, "I spoke to Jim about 23 this issue this morning. It is a high priority at 24 this point and we need to do what we can to push to 25 conclusion." Do you see that?</p>	<p>68</p> <p>1 and he's spent -- he and Isaac have spent over 100 2 hours trying to work on this and get it right. And it 3 seemed that my request that when we provide discovery 4 to UBS, we actually know what the heck we're giving 5 was a real challenge to Mr. Ellington and 6 Mr. Leventon. Obviously, that's all false.</p> <p>7 Q He claims this project is a herculean task. 8 Do you see that?</p> <p>9 A Yes.</p> <p>10 Q That's false, correct?</p> <p>11 A They knew the answer clearly based upon 12 what we know now. It was this is all -- the herculean 13 task was how to obfuscate it.</p> <p>14 Q And in fact, very specifically, he reminds 15 you that he's personally discussed at length, with the 16 head of KPMG Cayman Islands, the situation. And he 17 expressed to Mr. Ellington, supposedly, that there are 18 currently more than 6,000 ghost funds that -- such as 19 these target entities, stemming from the 2008 crisis, 20 that do not have directors, custodians, 21 administrations, bank accounts, that sit dormant and, 22 in all caps, "NO ONE" knows what they truly retain, et 23 cetera. Do you see that?</p> <p>24 A Yes.</p> <p>25 Q And then he says "I know that UBS is aware</p>

<p>69</p> <p>1 of the situation and I know Andy Clubok knows of the 2 situation, because I, Scott Ellington, have personally 3 discussed it with him several dozen times, including 4 as recently as this year." Do you see that?</p> <p>5 A Yes.</p> <p>6 Q Fair to say Mr. Ellington used this phrase 7 "ghost funds" to make it appear that there was just no 8 way to track these assets and where they had gone and 9 what Cayman entity had them or what was the status. 10 Is that fair?</p> <p>11 MR. MORRIS: Object to the form of the 12 question.</p> <p>13 A I'd say that is fair and this was not the 14 first time he had used a term. It was a term he liked 15 to use to indicate that if there were funds 16 pre-financial crisis down from Caribbean 17 jurisdictions, it would be impossible to get 18 information about them which, obviously, was not true 19 with respect to funds that Highland had the 20 information itself.</p> <p>21 BY MR. CLUBOK:</p> <p>22 Q And, in fact, Sentinel, which at that time 23 had ownership in the Multi-Strat -- specific in the 24 Multi-Strat asset. There was a specific subject of 25 this back and forth -- Sentinel had directors at that</p>	<p>71</p> <p>1 assets, correct?</p> <p>2 A That's correct. And we now know even more 3 that in June of 2020, he and several members of the 4 legal department were quite aware of the existence of 5 the entity that he ultimately beneficial owned, 6 Sentinel, because they got an indemnity from Sentinel 7 which they signed and executed. And they certainly 8 started to look for that around the time that we were 9 starting to do work around the UBS claim and litigate 10 with UBS.</p> <p>11 Q At the time Mr. Ellington was making these 12 representations to you, you were his ultimate boss?</p> <p>13 A Direct boss.</p> <p>14 Q You were his direct boss?</p> <p>15 A Correct.</p> <p>16 Q And you expected him to give you true and 17 accurate advice?</p> <p>18 A Yes. He was both a direct report and the 19 general counsel of the company, as well as an officer.</p> <p>20 Q Did you count on him having fiduciary 21 duties when he gave you advice or made statements to 22 you?</p> <p>23 A I would say that he certainly had fiduciary 24 duties. He was supposed to do that. Did I count on 25 him? I think it would be fair to say that at certain</p>
<p>70</p> <p>1 time, right?</p> <p>2 A Correct.</p> <p>3 Q And Sentinel had bank accounts at that time 4 that were not dormant, correct?</p> <p>5 A That's what we now know, yes. We didn't 6 know about or at least the independent board, myself, 7 Pachulski, our outside counsel or DSI had no awareness 8 of the existence of Sentinel at this time. We didn't 9 learn of that existence, as I said earlier, until Q1 10 '21.</p> <p>11 Q So when Mr. Ellington talks about ghost 12 funds that don't have directors or custodians or bank 13 accounts and sit dormant and no one know what they 14 truly retain, he failed to tell you that none of those 15 things applied to Sentinel, correct?</p> <p>16 A That's correct. And further, one of the 17 directors at Sentinel was a direct report to 18 Mr. Ellington, and that was Matt DiOrio. And Matt 19 DiOrio worked in the legal department but was not a 20 lawyer. He had been brought into the legal department 21 because he was Mr. Ellington's friend.</p> <p>22 Q And, in fact, Mr. Ellington was one of the 23 two ultimate beneficial owners of Sentinel at the time 24 he was claiming that he just didn't have any more 25 information about what happened to the Multi-Strat</p>	<p>72</p> <p>1 times I didn't have other avenues to get information 2 so I had to rely on him. I wouldn't say that I was 3 naive to what often were inconsistent and strange, 4 both statements and behavior.</p> <p>5 Q Well, whether or not he complied with his 6 fiduciary duties, fair to say that in your position, 7 you expected someone in his position to comply with 8 fiduciary duties in providing you information?</p> <p>9 A Absolutely.</p> <p>10 Q And did he?</p> <p>11 A We now know clearly not.</p> <p>12 Q Mr. Ellington concludes by assuring you 13 that Isaac and him are actively working on this and 14 speak literally daily about it. Do you see that?</p> <p>15 A Yes.</p> <p>16 Q Did Mr. Leventon ever --</p> <p>17 A That -- that statement by the way may be 18 true.</p> <p>19 Q Yeah, I would assume it is.</p> <p>20 Mr. Ellington and Mr. Leventon, as far as 21 you knew, were working very closely on everything 22 they -- correct?</p> <p>23 A Absolutely, yes.</p> <p>24 Q And they shared your experience directing 25 and -- directing their activities, you found them to</p>

<p style="text-align: right;">73</p> <p>1 share information with each other freely?</p> <p>2 A Well, Leventon reported to Ellington.</p> <p>3 Ellington reported to me. They certainly shared</p> <p>4 information as evidenced by the inclusion of each</p> <p>5 other on -- as a cc on many of the emails. And where</p> <p>6 they're not cc'd, eventually they're often blind</p> <p>7 copied.</p> <p>8 Q So do you think that -- well, did</p> <p>9 Mr. Leventon ever in words or substance say that he</p> <p>10 disagreed with anything that Mr. Ellington told you in</p> <p>11 this email that's been marked as Exhibit 153?</p> <p>12 A No, not in the least. And my recollection</p> <p>13 is from conversations is that he agreed with it.</p> <p>14 Q Mr. Leventon is testifying in this case</p> <p>15 that he thinks he did tell someone he disagreed with</p> <p>16 Ellington with respect to this email.</p> <p>17 Does that -- is that true as far as you</p> <p>18 know?</p> <p>19 A I have no -- there's no chance that -- he</p> <p>20 never said anything to me. He never said anything</p> <p>21 with respect to anybody who would have reported it to</p> <p>22 me. Anybody who would have heard that who was in my</p> <p>23 line of either direct report or my outside lawyers or</p> <p>24 consultants would have told me. That -- that</p> <p>25 statement doesn't ring true at all.</p>	<p style="text-align: right;">75</p> <p>1 existing and there being ultimately -- ultimate</p> <p>2 beneficial owners who were Dondero and Ellington. We</p> <p>3 didn't know anything about that whole secret ploy,</p> <p>4 meaning the structure of what they were trying to do,</p> <p>5 and these emails -- hiding those assets as opposed to</p> <p>6 trying to uncover them.</p> <p>7 Q So --</p> <p>8 A The long way of saying when we read this,</p> <p>9 we took it at face value, not the hyperbole that</p> <p>10 Ellington was engaging in about a herculean task and</p> <p>11 these hundreds of hours. I'd be challenged to think</p> <p>12 that he worked 100 hours on any one matter that I</p> <p>13 could think of during my time at Highland. But -- and</p> <p>14 I mean cumulatively.</p> <p>15 But it didn't make sense for them to hype</p> <p>16 this. And now it makes a lot of sense now that we</p> <p>17 know about the whole Sentinel structure on the side.</p> <p>18 Q No question that it would have been to</p> <p>19 HCM's advantage to identify every single possible</p> <p>20 asset that CDO Fund, SOHC or HFP had a claim to,</p> <p>21 correct?</p> <p>22 A Absolutely. It would have helped</p> <p>23 facilitate the deal with UBS.</p> <p>24 Q And by hiding that information,</p> <p>25 affirmatively hiding that information from you, it</p>
<p style="text-align: right;">74</p> <p>1 Q Did Highland Capital Management rely on</p> <p>2 Mr. Ellington's statements in this email?</p> <p>3 A We certainly believed that he and</p> <p>4 Mr. Leventon were unable to get the information that</p> <p>5 we were requesting. And it's hard to say "relied"</p> <p>6 because of what we now know about Mr. Ellington and</p> <p>7 Mr. Leventon and to some degree some of the concerns</p> <p>8 that may have been in the back of our minds at the</p> <p>9 time.</p> <p>10 However, because CDO Fund and SOHC had a</p> <p>11 judgment against them for north of a billion dollars,</p> <p>12 if there were assets in CDO Fund or SOHC, finding them</p> <p>13 and delivering them and using them to settle with UBS</p> <p>14 would have been to the advantage of HCMLP. The only</p> <p>15 reason it turns out it wasn't to the advantage of</p> <p>16 certain people who weren't HCMLP, i.e., Dondero and</p> <p>17 Ellington, is because those assets had been secretly</p> <p>18 stripped and sent over to them.</p> <p>19 When we're reading an email like this or</p> <p>20 when I was reading an email like this, there was no</p> <p>21 benefit to Ellington being deceptive or from Leventon</p> <p>22 being deceptive. Because if these funds were still</p> <p>23 down in CDO Fund or SOHC, giving them to UBS to help</p> <p>24 facilitate an overall deal would have been great for</p> <p>25 Highland. We just didn't know anything about Sentinel</p>	<p style="text-align: right;">76</p> <p>1 damaged HCM, correct?</p> <p>2 A Hugely. It led us down a path which we had</p> <p>3 started in the first half of 2020 and then into the</p> <p>4 second half of 2020 of fighting hammer and tong with</p> <p>5 UBS. Because my perspective after the work that we</p> <p>6 had done analyzing the transaction and working with</p> <p>7 counsel and working with in-house legal team about the</p> <p>8 facts and the prior litigation was that Highland</p> <p>9 hadn't done anything wrong and these two shell</p> <p>10 entities had liability. And the liability was limited</p> <p>11 to the shells. There was no dispute from early on,</p> <p>12 even from 2017 with the summary judgment motion that</p> <p>13 UBS prevailed on, that those entities were going to be</p> <p>14 found liable. And the only question was did they have</p> <p>15 any assets.</p> <p>16 The perspective was they never had any</p> <p>17 assets. That perspective was developed because that's</p> <p>18 what Ellington and Leventon told me and told the rest</p> <p>19 of the board. The reason that we fought so hard was</p> <p>20 we didn't want to create liability. We didn't think</p> <p>21 there was appropriate liability for Highland, the</p> <p>22 debtor, to have to be on the hook for that judgment.</p> <p>23 If there were assets in the subsidiaries, CDO Fund and</p> <p>24 SOHC and their subsidiaries, getting them to UBS would</p> <p>25 only help facilitate the deal to relieve Highland, the</p>

<p style="text-align: right;">77</p> <p>1 debtor, of any either litigation risk or costs to keep 2 fighting with UBS. We spent millions and millions of 3 dollars on that fight. 4 Q Fair to say that by hiding the information, 5 it also damaged UBS? 6 A UBS had to -- yes. I think UBS had to do a 7 similar thing and had to defend itself. 8 Q Tab~6 should be 154. I think I messed up. 9 So the email dated August 21, 2020, that we've been 10 discussing, in which Mr. Ellington refers to ghost 11 funds, is Exhibit 154. 12 And I want to turn now to 155, which is 13 Tab~7. 14 (Deposition Exhibit 155 was received and 15 marked for identification, as of this date.) 16 BY MR. CLUBOK: 17 Q Exhibit 155 is a letter that I sent to your 18 outside counsel on September 16, 2020, in which UBS -- 19 I pass on that UBS is demanding full satisfaction of 20 the judgments it then had against CDO Fund and SOHC. 21 Do you see that? 22 A Yes. 23 Q And at that time, you certainly believed 24 that -- that judgment was largely uncollectible 25 because of the lack of assets in those funds that you</p>	<p style="text-align: right;">79</p> <p>1 concerned about -- I was certainly concerned about 2 where that asset was. And also then could I somehow 3 use that to facilitate a deal with UBS. 4 Q By the way, you said that Mr. Dondero told 5 you with respect to the Greenbriar asset that it had 6 been participated out. What did you understand that 7 phrase to mean? 8 A It's a common phrase in finance. You can 9 sell an asset if you're able to transfer it. If for 10 some reason transferring the asset is difficult, you 11 can essentially transfer the financial attributes of 12 that asset to somebody else by entering into what's 13 referred to as participation agreement. In a 14 participation agreement, the participant, which in 15 that case would be the counterparty to CDO Fund, 16 Highland, never gets whatever flows are generated off 17 of that -- of that asset. The recipient, if it was in 18 Highland's name, the CDO Fund's name, would receive 19 proceeds and then it would be required to turn them 20 over to the participant. 21 Q And did you come to learn that in fact that 22 was not true? 23 A Yes. 24 Q Did you come to learn that Greenbriar was 25 another asset that CDO Fund had or the folks who then</p>
<p style="text-align: right;">78</p> <p>1 understood, based on the information that 2 Mr. Ellington and Mr. Leventon others had provided 3 you, correct? 4 A Largely. I think at that point though I 5 was concerned about the Greenbriar asset that had been 6 referred to earlier in one of the emails. My concern 7 about that asset was that while it wasn't listed as an 8 asset owned by CDO Fund, I had concern because nobody 9 could give me an explanation as to what had happened 10 to it that was satisfactory. 11 Dondero had said to me, Oh, that's nothing. 12 We participated that asset out a long time ago. I 13 was -- that struck me as a very odd -- this was in and 14 around the mediation time. That struck me as a very 15 odd remembrance for him because a participation of a 16 small asset like that from ten years ago, while his 17 memory is very sharp, it was very unusual that 18 somebody would remember that specific asset if there 19 had been numerous other assets and the warehouse had 20 had so much -- so many assets in it that were 21 ultimately foreclosed upon. So that always just stuck 22 in the back of my mind. 23 But to your question, largely 24 uncollectible. But that this asset of Greenbriar that 25 could have been worth 8- to 10 million, we were</p>	<p style="text-align: right;">80</p> <p>1 controlled CDO Fund had attempted to transfer to 2 Sentinel as part of this whole insurance policy 3 situation? 4 A Yes. We found out in the first quarter of 5 '21 and I don't recall if it was January or February, 6 but that was our first learning and starting to 7 uncover this issue after we terminated Mr. Leventon. 8 I came to understand that that asset had 9 been part of the transfer to Sentinel but somehow got 10 lost in the transfer. And so the asset, meaning the 11 preferred shares in Greenbriar, were never 12 reregistered in Sentinel's name and remained in CDO 13 Fund's name. 14 But I believe on Highland's books, they 15 actually had been eliminated because the Highland 16 group, Leventon, Ellington, Sevilla, who 17 orchestrated -- Katie Irving who orchestrated this 18 transfer, removed it from Highland's books, but then 19 it never made it to Sentinel. So from the trustee's 20 perspective, that asset remained with CDO Fund. I 21 think I said Highland but CDO Fund. 22 Q So with respect to this asset, that group 23 attempted to fraudulently transfer it but were just 24 incompetent in their execution; is that fair? 25 A Yeah. I mean however you want to</p>

<p style="text-align: right;">81</p> <p>1 characterize the transfer, it didn't get -- whether 2 it's fraudulent, not fraudulent, it didn't get done. 3 Q Okay. Fair to say that when Mr. Dondero 4 talked about participation, based on what you now know 5 but didn't know then, it's fair to say that 6 Mr. Dondero was lying to you? 7 A I think it's fair to say that -- I don't 8 know if it was ... 9 Q Let me rephrase the question. 10 A He certainly -- he certainly didn't know -- 11 it certainly hadn't been participated. It was 12 certainly an odd recollection. And it -- I don't know 13 what he was trying to do. 14 Q Fair to say that to the extent Mr. Dondero 15 knew anything about the Sentinel transaction, but when 16 you talked about Greenbriar, he talked vaguely about 17 participation, that he omitted key facts you would 18 have expected him to disclose if he was being truthful 19 to you; is that correct? 20 A We weren't looking at a -- at a document. 21 I think it just -- it came up in a conversation where 22 I said if we can find this Greenbriar asset and use 23 that, that could help facilitate a deal with UBS. And 24 he said, Oh, there's nothing -- there's nothing -- 25 something to the effect of there's nothing there with</p>	<p style="text-align: right;">83</p> <p>1 the offshore activities of Dondero and Ellington as 2 ultimate beneficial owners. And that shows up in some 3 of the documents that we found in our system related 4 to Cayman activity. 5 Q I think you mentioned that Dondero was a 6 owner of -- have you also come to learn now that Scott 7 Ellington is at least a partial owner of SAS? 8 A I believe so. I'd have to go back and 9 look. I think that's the case. 10 Q If you look at the next tab, Tab~8 it's 11 been marked as Exhibit 156. 12 (Deposition Exhibit 156 was received and 13 marked for identification, as of this date.) 14 BY MR. CLUBOK: 15 Q This was an exchange involving various 16 folks that you can see on the email. Oops, I'm sorry. 17 That's the wrong document. 18 Exhibit -- skip that Tab~8 to Tab~9. 19 Exhibit 156 is Tab~9, which is an email 20 exchange around late 20 -- January 2021, amongst you 21 and others including Katie Irving and Stephanie 22 Vitiello and others. Do you see that? 23 A Yes. 24 Q In particular, there's an email where -- in 25 the chain where Greg Demo, who is one of your outside</p>
<p style="text-align: right;">82</p> <p>1 Greenbriar. That asset's participated a long time 2 ago. 3 Q Okay. So in substance, he told you there 4 was no value associated with Greenbriar that could be 5 used for CDO Fund to satisfy the judgment that UBS had 6 against it? 7 A That's fair, yes. 8 Q And that was not true, correct? 9 A It turns out that's not true, yes. I don't 10 know what he knew or didn't know. 11 Q Do you know what SAS Management is? 12 A I do, yes, now. 13 Q What is it? 14 A I've been told that it was called sword and 15 shield. It was a secret company that the legal 16 department and a guy named Dilip Nissan (phonetic) who 17 were involved with -- it was owned by either Dondero 18 or some related entity. Certainly related to 19 Highland. It was operated out of Highland's office -- 20 offices. It's unclear to me what it really did. It 21 showed up in one litigation, I believe, with Grupo 22 Mexico. And we've -- we tried to figure out -- what 23 get to the bottom of what it is but we don't have a 24 great understanding. 25 It certainly was connected to, we now know,</p>	<p style="text-align: right;">84</p> <p>1 counsel, sends to Katie Irving and asks for complete 2 list of the parties who worked on SAS or on SAS 3 emails, et cetera, et cetera. And then notes in big 4 bold letters, This request is not limited to Katie. 5 If anyone else knows the answers to these questions, 6 tell us. Do you see that? 7 A Yes. 8 Q Did Katie Irving ever provide the 9 information that Mr.~Demo is requesting? 10 A No, she did not. 11 Q Did she explain why? 12 A No. And in looking at this email chain 13 starting from the bottom, it was Jack Donahue who 14 initiated the request. Jack is an associate with DSI 15 and he started hitting people up with an email, Can 16 you tell me anything about SAS Management. And Helen 17 Kim says, no, don't know anything. 18 And then Jack, because he's dogged, says, 19 do you know what it stands for? Anybody know anything 20 about this? Any contracts? And Stephanie Vitiello, 21 who's also an attorney says, No. 22 And then Jack doesn't give up. So he asks 23 again and they keep saying "no." And then Vitiello 24 says "I'm not aware of any contracts." 25 So his question is do you know anything</p>

<p style="text-align: right;">85</p> <p>1 about SAS. And she says, "I'm not aware of any 2 contracts." So that is a strange response -- 3 nonresponsive response. 4 Then it goes to -- Jack doesn't give up. 5 So eventually he involves Demo. Demo then, I think, 6 pushes on the group again. And Katie Irving says 7 there's no -- there's no info. First she says that to 8 Jack, no info, nondebtor, Summit Management are 9 directors. And then it goes a little later. I think 10 I sent an email on the third page of this exhibit 11 because I had been copied at some point by Demo and 12 basically was tired of the nonsense and said, you 13 know, who is this entity and who's got the docs? I'm 14 told it's alive. Where is it? 15 And I get a specific response from Katie 16 Irving that isn't a non answer or nonresponsive. It's 17 a direct deceitful response that say, I'm not sure who 18 advised you. It is totally incorrect. It's not a 19 known entity. That's false. Legacy claims funding 20 platform, maybe, maybe not. Wholly unrelated to the 21 debtor. Completely untrue since debtor employees are 22 the ones who did all the work on it without 23 compensation. 24 And then it continues with very 25 nonresponsive responses and ultimately JP Sevilla, all</p>	<p style="text-align: right;">87</p> <p>1 Q With respect to those emails, have you been 2 able to recover the SAS emails from that server? 3 A No. We determined that SAS was not on the 4 Highland server platform. It was separate. 5 Q Did SAS separately pay the Highland 6 employees from a different fund for the work they did 7 with -- in connection with SAS as far as you know? 8 A Not to our knowledge, no. 9 Q Was Katie Irving -- 10 A Certainly Highland did not get paid or 11 reimbursed for the work that Highland employees did 12 working for SAS. 13 Q Yeah. Did you know -- when was the first 14 time you learned about -- strike that. 15 When was the first time you learned that 16 any Highland employees were actually doing work for 17 SAS? 18 A That would have been in the first quarter 19 of '21, 2021. 20 Q Did you ever hear of SAS referred to as a 21 project related to litigation funding? 22 A I don't -- I've heard that since, but I 23 think it was claims buying. I never heard of it as 24 litigation funding to my knowledge. I don't recall 25 that.</p>
<p style="text-align: right;">86</p> <p>1 of these folks we now know had an SAS email address. 2 And JP Sevilla says it's -- deceptively says this was 3 litigation. The litigators did all of the substantive 4 work. They're all gone. 5 Q And you mentioned they had emails with an 6 SAS email address. What do you mean by that? 7 A They had an SAS -- I don't know if it was 8 SAS -- I think it was sasmanagement.com. I stumbled 9 across it when I terminated Elling -- Leventon and 10 went to send his termination letter to him and 11 Microsoft Outlook in a very friendly way popped it up 12 as one of the alternate addresses. 13 I don't recall ever seeing it. It must 14 have been in some trail of emails and that's how it 15 did it. And that got us looking as to what this thing 16 was. And that would have been the genesis is my 17 belief. That would have been genesis of the original 18 inquiry from Donahue. 19 Q Did Ms. Irving ever tell you in words or 20 substance that she was originally hired by Highland to 21 work on SAS tasks among other things specifically? 22 A No. 23 Q Do you know that Scott Ellington hired her? 24 A I don't. I don't know. That wouldn't 25 surprise me.</p>	<p style="text-align: right;">88</p> <p>1 Q Ms. Irving -- are you aware of the 2 following testimony by Ms. Irving. 3 "Question: What instigated your move from 4 Ernst & Young to Highland Capital? 5 "Answer: Highland was looking for someone 6 to essentially work on a incubator project related to 7 litigation funding. I thought it seemed like an 8 interesting opportunity. 9 "Question: What about this struck you as 10 interesting? 11 "Answer: I met the team. I thought it was 12 a very entrepreneurial environment. 13 "Question: Who was the team? 14 "Answer: Scott Ellington and JP Sevilla. 15 "Question: Did this litigation funding 16 have its own entity that worked under separate from 17 Highland Capital? 18 "Answer: Yes. 19 "Question: What entity was that? 20 "Answer: SAS Asset Recovery." 21 BY MR. CLUBOK: 22 Q Had you heard about this testimony? 23 A No. 24 Q To the extent that it's true, as Ms. Irving 25 testified to in her deposition in this matter, that</p>

<p style="text-align: right;">89</p> <p>1 she was hired from the beginning to work on the SAS 2 project or SAS Asset Recovery, is that consistent with 3 what she told you? 4 A I just never have heard anything like that. 5 I never inquired of her who hired her and what her 6 specific role was. She was assigned to the Highland 7 legal team even though she wasn't a lawyer and she 8 worked on the UBS matter, she worked on Cornerstone. 9 But, frankly, she didn't have a lot to do that I knew 10 of. But she was -- as far as I knew -- exclusively a 11 Highland employee and was a full-time employee at 12 Highland and paid that way. She was paid well. 13 Q When you say she worked on the UBS matter, 14 you mean she supported Mr. Leventon's day-to-day 15 oversight of UBS litigation? 16 A That's my recollection. I don't know that 17 she was day-to-day, but she certainly had involvement 18 is my recollection. 19 Q Okay. This email exchange that we've been 20 looking at, Exhibit 156, was late January of 2021. 21 Fair to say shortly after that, you 22 disclosed to UBS that you had learned about the 23 significant transfer of assets from the judgment to -- 24 debtors to UBS to Sentinel to purportedly purchase an 25 insurance policy, correct?</p>	<p style="text-align: right;">91</p> <p>1 according to the signature pages at the end that that 2 we've been referring to loosely as the insurance 3 policy, correct? 4 A That's correct, yes. 5 Q And did Mr. Leventon ever tell you about 6 what he called the UBS ATE during -- ever? Did he 7 ever tell you about it? 8 A Never. 9 Q ATE stands for After the Event; is that 10 your understanding? 11 A That's my understanding, yes. 12 Q And in a nutshell, what this policy does is 13 it says okay, you've already got a litigation or 14 there's already been an event that you might have 15 liability for. And knowing that, we're going to now 16 issue a policy to satisfy a judgment in case you lose 17 the litigation over that event. Is that a fair 18 summary of -- 19 A That's what it looks to do. 20 Q Yeah. And Mr. Leventon -- by the way, who 21 is Chris Dunn? 22 A I don't know. 23 Q Mr. Leventon says, "Label all communication 24 related to this project as privileged as all documents 25 are being drafted at the request of the legal team."</p>
<p style="text-align: right;">90</p> <p>1 A Yeah, it was in and around this time. 2 Q And when did you first become aware of that 3 transfer of assets in connection with the acquisition 4 of an insurance policy? 5 A Again, I don't have the exact dates in 6 front of me. I'd have to be refreshed on it. But it 7 was in and around this time. Leventon was filed -- 8 was fired at the beginning of January 2021; DiOrio was 9 fired at the end of -- the end of February 2021. When 10 we fired Leventon, we didn't know anything about SAS 11 or Sentinel or any of these transfers. When we fired 12 DiOrio, we definitely knew about it. So it was in 13 that time frame. 14 Q Okay. If you turn to Tab~10, which is 15 Exhibit 57. 16 (Deposition Exhibit 57 was received and 17 marked for identification, as of this date.) 18 BY MR. CLUBOK: 19 Q There's a email exchange between Isaac 20 Leventon and Chris Dunn. Subject is UBS privilege, he 21 says, from October of 2017. And he attaches something 22 called the UBS ATE PDF. Do you see that? 23 A Yes. 24 Q And the attachment is the so-called Legal 25 Liability Insurance Policy that's been executed</p>	<p style="text-align: right;">92</p> <p>1 Do you see that? 2 A Yes. 3 Q But the document that's attached is an 4 insurance policy, right? 5 A Correct. 6 Q That wouldn't be a privileged document, 7 correct? 8 MR. MORRIS: Objection to the form of the 9 question. 10 A Not in my experience. 11 BY MR. CLUBOK: 12 Q You've not claimed privilege over this 13 document, correct? 14 A That's correct. 15 Q And as far as you know, was this document 16 ever provided to UBS prior to February of 2021? 17 A Not to my knowledge, no. 18 Q Do you remember specifically how you -- 19 does looking at it ring a bell as to how you found it 20 or who first told you we've got this? 21 A It's a bit of a convoluted story, but it 22 goes very much along the lines of when Microsoft 23 Outlook graciously gave me the SAS Management email 24 for Leventon at some point. I asked our team to start 25 looking to figure out what SAS was. And when they</p>

<p style="text-align: right;">93</p> <p>1 were doing that, they came across -- and when I say 2 "our team," I meant DSI and outside counsel. When 3 they were doing that, they came across Sentinel. When 4 they came across Sentinel, the aforementioned 5 Mr. Romey recalled that Sentinel was a redeemer out of 6 the Multi-Strat fund. And that got us looking in the 7 system for anything related to Sentinel. And that 8 then brought us to the policy. 9 But before that, we had no idea who Sent -- 10 Sentinel was not something on my radar screen. We had 11 no idea who they were. If they showed up as a 12 redeemer on a list I got, I wouldn't have thought they 13 were a related party. 14 Q Now that you've had a chance to look at it 15 in your role as overseeing Highland's assets and 16 liabilities and the assets/liabilities of the funds 17 that may affect Highland, fair to say that this 18 insurance policy, if it was valid, would have been 19 very material to UBS? 20 A Not only to UBS. UBS is a pretty big 21 business so materiality for them I'm not quite sure 22 about. But certainly material to Highland. Highland 23 controlled CDO Fund. CDO Fund was -- purportedly from 24 the Highland legal team had no assets. And it turns 25 out that it had one very material asset which is this</p>	<p style="text-align: right;">95</p> <p>1 You could see the previous page was page 16 2 of 16 and then this one for whatever reason is called 3 page 17 of 16. I guess it's an add-on page after all 4 the signature pages that were all 16 of 16. 5 I just want to refer you to this just to 6 make sure we all understand what we're talking about. 7 And this is a schedule that's part of the legal 8 liability insurance policy that we sometimes called 9 the insurance policy or the ATE policy that's attached 10 by Mr. Leventon to his email that's been identified as 11 Exhibit 57. Are you with me? 12 A Yes. 13 Q So on that schedule, it refers to the 14 insurer and the insurer here is Sentinel Reinsurance 15 Limited, correct? 16 A Yes. 17 Q And the insureds were Highland CDO 18 Opportunity Master Fund, L.P., Highland CDO Holding 19 Company, and Highland Special Opportunities Holding 20 Company, correct? 21 A Yes. 22 Q And you understand that Highland Special 23 Opportunities Holding Company is a -- the entity that 24 we've been called SOHC, correct? 25 A That's correct.</p>
<p style="text-align: right;">94</p> <p>1 insurance policy. 2 Q As part of the work you've been doing at 3 Highland, you had control over CDO Fund, correct? 4 A That's correct, yes. 5 Q And at some point -- 6 A Through the general partner. 7 Q Right. And you understood from the get-go 8 even before you took your job as independent director 9 that CDO Fund owed UBS over \$500 million, correct? 10 A That was from the original decision prior 11 to the judgment. And it looked to us like that was 12 going to be a pretty sound ruling with respect to CDO 13 Fund and SOHC. 14 Q If you had known that CDO Fund had an 15 insurance policy for \$100 million, would you have 16 hesitated at all to tender that as at least partial 17 satisfaction of the over 500 million-dollar judgment 18 against CDO Fund? 19 A No. We would have done it right away. I 20 would have saved months and months, years and 21 countless dollars, tens of millions. 22 Q If you turn to the page -- the page that's 23 marked 17 of 16, oddly. It's Bates labeled 3070 at 24 the bottom, Exhibit 57. It may have a different 25 numbering system in the Caymans.</p>	<p style="text-align: right;">96</p> <p>1 Q It talks about a legal action. Do you see 2 that in the middle of the schedule? 3 A Yes. 4 Q And that legal action it specifically 5 references was the underlying UBS litigation with the 6 High -- with Highland and the related funds that 7 had -- that still is pending in New York, correct? 8 A That's correct. 9 Q And that's the very -- we talk about the 10 UBS litigation with Highland or the New York action. 11 That's all the same as what's captioned here on this 12 schedule? 13 A That's my understanding, yes. 14 MR. MORRIS: Mr. Clubok, I don't mean to 15 interrupt, but I just want to point out that it's 16 almost 4:15 and I just want to remind you that I have 17 a hard stop at 5:00 and I understood you did as well. 18 MR. CLUBOK: Yeah, I understand. 19 BY MR. CLUBOK: 20 Q So, Mr. Seery, this ATE by the way as an 21 asset of the funds would have been responsive to UBS's 22 discovery request we previously looked at that were 23 marked as Exhibit 69, correct? 24 A I don't know specifically, but I believe it 25 would have been. Certainly would have been an asset</p>

<p style="text-align: right;">97</p> <p>1 and part of the requests were assets of CDO Fund and</p> <p>2 SOHC. So probably would have been responsive to both.</p> <p>3 Q You would have turned this over immediately</p> <p>4 had you been aware of it, correct?</p> <p>5 A Absolutely.</p> <p>6 Q And, in fact, once you became aware of it,</p> <p>7 you turned it over, you know, almost immediately or</p> <p>8 shortly after you found it, correct?</p> <p>9 A Within -- within a day or two. Yeah, I say</p> <p>10 within a day or two. As soon as we figured out what</p> <p>11 it was, and we were very quick to get this to UBS.</p> <p>12 And the reason for that is we had a pending settlement</p> <p>13 with UBS. And my view and obviously my co-directors</p> <p>14 at the time agreed we could not go forward with the</p> <p>15 settlement until we figured this out. And we needed</p> <p>16 to do that with UBS to tell them. We couldn't just</p> <p>17 say we're not going forward with the settlement. We</p> <p>18 had to say we're not going forward with the</p> <p>19 settlement.</p> <p>20 UBS, obviously, was taken back by that and</p> <p>21 so we have to divulge some things to you that have --</p> <p>22 they previously asked for in discovery and we've now</p> <p>23 found and it may change the dynamic of our</p> <p>24 discussions. So we really did need to get that</p> <p>25 quickly because we were actively working on a</p>	<p style="text-align: right;">99</p> <p>1 might be the objection. It's certainly improper. And</p> <p>2 I think in my opinion it would have been fraudulent.</p> <p>3 BY MR. CLUBOK:</p> <p>4 Q In your role that -- you know -- strike</p> <p>5 that.</p> <p>6 In the roles that you have had with respect</p> <p>7 to managing HCM and the related entities' affairs, you</p> <p>8 would consider it fraudulent to actively conceal</p> <p>9 Exhibit 57 from UBS, correct?</p> <p>10 A I would, yes. The debtor -- during the</p> <p>11 case, the debtor is a trustee under the bankruptcy</p> <p>12 code. Trustees are fiduciaries to the estate. Each</p> <p>13 of the creditors have a interest or potential interest</p> <p>14 in the estate. Not dealing with them fairly and</p> <p>15 openly I believe to be against the requirements of the</p> <p>16 person who manages that fiduciary, i.e., the debtor.</p> <p>17 Q And would you believe that if you had a</p> <p>18 legal team that was tasked with helping you and they</p> <p>19 actively concealed Exhibit 57 and other information</p> <p>20 like it that they would be engaging in fraud?</p> <p>21 MR. MORRIS: Objection to the form</p> <p>22 question.</p> <p>23 A I think that's probably fair. What we've</p> <p>24 come to learn is that there was personal interest that</p> <p>25 would take this well beyond the scope of what normally</p>
<p style="text-align: right;">98</p> <p>1 settlement agreement at the time.</p> <p>2 Q You felt like given the status of the</p> <p>3 restructuring and the disputes that existed between</p> <p>4 UBS and Highland both in New York and in the</p> <p>5 restructuring, that it was just the obligation of HCM</p> <p>6 to provide this information to UBS, correct?</p> <p>7 A Absolutely. We're -- we're certainly</p> <p>8 entitled to litigate -- litigate hard, be aggressive</p> <p>9 to protect the interest of the estate. We're not</p> <p>10 entitled to defraud creditors and lie to them about</p> <p>11 the situations.</p> <p>12 Q And an active effort to not provide this</p> <p>13 information to UBS that's set forth in Exhibit 57</p> <p>14 would be an effort to defraud UBS, correct?</p> <p>15 MR. MORRIS: Objection to the form of the</p> <p>16 question.</p> <p>17 MR. CLUBOK: Sorry. Let me ask that -- let</p> <p>18 me rephrase it then.</p> <p>19 BY MR. CLUBOK:</p> <p>20 Q If there was an active effort to hide</p> <p>21 Exhibit 57 from UBS, it would have been a fraud on</p> <p>22 UBS, correct?</p> <p>23 MR. MORRIS: Objection to the form of the</p> <p>24 question.</p> <p>25 A If it's a legal conclusion, I guess that</p>	<p style="text-align: right;">100</p> <p>1 would, in my view, be the scope of their employment.</p> <p>2 And folks were acting contrary to the interest of</p> <p>3 the -- of the debtor and the estate, notwithstanding</p> <p>4 their fiduciary duties as lawyers for the debtor in</p> <p>5 possession.</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q Okay. We've talked about the insurance</p> <p>8 policy that could have been used to satisfy at least</p> <p>9 some of the judgment against CDO Fund. I want to talk</p> <p>10 about the way that policy was acquired and I want to</p> <p>11 ask you to turn to Tab-11, where we have Exhibit 2,</p> <p>12 which is a purchase agreement dated August 7, 2017</p> <p>13 between CDO Fund, CDO Hold Co and SOHC. Do you see</p> <p>14 that?</p> <p>15 A Yes.</p> <p>16 (Deposition Exhibit 2 was received and</p> <p>17 marked for identification, as of this date.)</p> <p>18 BY MR. CLUBOK:</p> <p>19 Q And by the way, I should point out if you</p> <p>20 look at the signature page, fair to say that</p> <p>21 Mr. Dondero signed on behalf of every so-called seller</p> <p>22 entity?</p> <p>23 A That's correct, yes.</p> <p>24 Q And just to confirm, if you'd look back at</p> <p>25 Exhibit 57, which was the insurance policy, you see</p>

<p>101</p> <p>1 that also Mr. Dondero signs for all of the funds, 2 correct? 3 A That's correct. 4 Q And in both cases, the countersignator is 5 Andrew Dean, who was identified as a director of 6 Sentinel Reinsurance at the time. Do you see that? 7 A That's correct. 8 Q So the purchase agreement, you -- you have 9 seen this before, right? 10 A I have, yes. 11 Q And if you turn to Exhibit A, is it your 12 understanding that this is a list of the assets that 13 were purportedly used to acquire the ATE policy? 14 A That's correct, yes. 15 Q Now the ATE policy, we looked at that 16 schedule a moment ago if you'd flip back to 17 Exhibit 10, you'd see there were three insureds 18 listed, right? CDO Fund, CDO Hold Co and SOHC? 19 A Yes. 20 Q And those were the three entities that 21 signed the insurance policy, correct? 22 A That's right. 23 Q But in this purchase agreement, there are 24 six different sellers? 25 A Yes.</p>	<p>103</p> <p>1 policy equal to some portion of the value of the 2 assets doesn't make any sense anyway. Meaning if I 3 have \$100 and I'm a potential judgment debtor, what 4 value do I get out of buying a \$100 insurance policy. 5 I should hold onto the \$100 and if I lose, just lose 6 that. 7 Q Yeah. And, in fact, the ultimate value of 8 the assets transferred proved to be even more than 9 \$100 million according to Highland's calculations, 10 correct? 11 A That's our estimate, yes. 12 Q You understand that CDO Hold Co, like SOHC, 13 was a wholly-owned sub of HFP? 14 A I think it was an indirect wholly-owned 15 sub. 16 Q And same with HFC? Also in the HFP family? 17 A I don't recall where HFC sat exactly, but 18 it would have been in that family. 19 Q Okay. You know back in 2017, Highland was 20 claiming that HFP was not an alter ego of SOHC and 21 they should not be held liable as such. You're aware 22 of that? 23 A Yes, yeah. 24 Q And yet you see here that all of the assets 25 of HFP and its subs are being pooled to buy insurance</p>
<p>102</p> <p>1 Q Including Highland Financial Partners, 2 which was the -- then -- of which SOHC was a 3 subsidiary of, correct? 4 A Correct. 5 Q By the way, you understand that -- are you 6 aware that UBS has now obtained a judgment that holds 7 HFP to be the alter ego of SOHC and therefore 8 responsible for the same judgment that SOHC is 9 responsible for? 10 A I don't know if I was aware of that or not. 11 I just don't know. 12 Q Okay. I'll just represent -- I'll 13 represent to you and we'll provide to your counsel 14 after this that there was a recent court order in 15 New York that issued a judgment against HFP as the 16 alter ego of SOHC and holding them accountable for the 17 same judgment as SOHC. 18 Do you have any idea why these six entities 19 would have transferred assets to pay for insurance 20 policy that was supposedly covering three entities? 21 A No idea other than as directed by 22 Mr. Dondero to move all of the assets. The idea of 23 taking virtually all of your assets, when you're a 24 putative judgment debtor or a potential judgment 25 debtor, and using all of them to buy an insurance</p>	<p>104</p> <p>1 purportedly for -- not for HFP, but for SOHC and the 2 two others identified, correct? 3 A That's what it does, yes. 4 Q And then of course Dondero signs on behalf 5 of all of the funds, right? 6 A Correct. 7 Q Do you know whose idea it was to create the 8 purchase agreement? 9 A I've looked at a lot of documents on it. I 10 don't recall specifically. 11 Q You filed a declaration in connection with 12 this motion to withdraw the answer and consent to 13 judgment. And I'm not going to go through your 14 declaration with you, but I take it you stand by your 15 declaration, everything you said in it? 16 A I believe so, unless there's something in 17 there that has now proved incorrect. 18 Q Yeah, let me put it another way. 19 You're not aware of any changes to your 20 declaration as far as you sit here today? 21 A Yeah. If something changed, I would 22 forthrightly admit I was wrong and identify what it 23 was. 24 Q Yeah. And, again, I'm just trying to save 25 a little time here.</p>

<p>105</p> <p>1 A Yep.</p> <p>2 Q But I think in your declaration you said</p> <p>3 that you understood the transferred assets conveyed to</p> <p>4 Sentinel had a face value of more than 300 million and</p> <p>5 a market value at the time of transfer of over</p> <p>6 100 million?</p> <p>7 A That's our estimate, yes.</p> <p>8 Q Okay. And that as far as you know, that's</p> <p>9 correct, those numbers?</p> <p>10 A Yes.</p> <p>11 Q Obviously, that's much greater than</p> <p>12 \$25 million, which was supposed to be the premium</p> <p>13 price, correct?</p> <p>14 A That's correct, yes.</p> <p>15 Q And indeed, it's even greater than the</p> <p>16 total coverage that's supposedly being provided by the</p> <p>17 policy which was only \$100 million, correct?</p> <p>18 A That's correct, yes.</p> <p>19 Q Based your experience, is there any good</p> <p>20 faith justification for transferring over \$100 million</p> <p>21 in assets to buy an insurance policy with this sort of</p> <p>22 purported coverage?</p> <p>23 A Not a good faith one, no.</p> <p>24 Q Fair to say that had you known about this</p> <p>25 purchase of assets and transfer of assets in</p>	<p>107</p> <p>1 A I believe that's correct, yes.</p> <p>2 Q You understand that all of the work --</p> <p>3 strike that.</p> <p>4 I think you testified earlier that you came</p> <p>5 to learn that Matt DiOrio, who was a Highland employee</p> <p>6 at the time, had been one of the directors at</p> <p>7 Sentinel, correct?</p> <p>8 A That's correct, yes.</p> <p>9 Q Are you aware that Sentinel had three</p> <p>10 directors but no employees that directly were paid by</p> <p>11 Sentinel?</p> <p>12 A I've come to learn that, yes.</p> <p>13 Q And have you come to learn that all of the</p> <p>14 business of Sentinel was done by various people who</p> <p>15 were being paid by Highland largely, or maybe</p> <p>16 entirely, in the legal department?</p> <p>17 A Yes, that's correct. And I think all of</p> <p>18 the business of Sentinel was on behalf of Highland or</p> <p>19 Highland-related entities.</p> <p>20 Q Were you -- so -- and have you come to</p> <p>21 learn that work done on behalf of Sentinel continued</p> <p>22 after the bankruptcy filing?</p> <p>23 A I have come to learn that, yes.</p> <p>24 Q And that work was done by Mr. Ellington,</p> <p>25 Mr. Leventon, Mr. Sevilla, Mr. DiOrio, Ms. Irving and</p>
<p>106</p> <p>1 connection with the insurance policy, you would have</p> <p>2 also promptly provided all of that information to UBS?</p> <p>3 A Yes. And when we did discover, we did so.</p> <p>4 (Deposition Exhibit 3 was received and</p> <p>5 marked for identification, as of this date.)</p> <p>6 BY MR. CLUBOK:</p> <p>7 Q If you turn to Tab~12, we've got Exhibit 3</p> <p>8 there. That is a memo from Shawn Raver to Rick</p> <p>9 Swadley regarding the policy?</p> <p>10 A Yes.</p> <p>11 Q And it attaches a tax compliance memo</p> <p>12 regarding sale of assets to Sentinel. Do you see</p> <p>13 that?</p> <p>14 A Yes.</p> <p>15 Q You've seen this memo now before today,</p> <p>16 correct?</p> <p>17 A I have, yes.</p> <p>18 Q And this is another one that you had not</p> <p>19 seen until you sort of uncovered all of the events in</p> <p>20 connection with the insurance policy?</p> <p>21 A That's correct, yes.</p> <p>22 Q Fair to say that when this memo was written</p> <p>23 in 2018, HCM had recorded the market value of those</p> <p>24 assets that were transferred in connection with the</p> <p>25 insurance policy as approximately 105 million?</p>	<p>108</p> <p>1 Ms. Vitiello?</p> <p>2 A Certainly what I've seen evidence of, and I</p> <p>3 would put work in quotes, I see evidence that</p> <p>4 Mr. Ellington, Mr. DiOrio, and I believe Mr. Leventon.</p> <p>5 But certainly the first two and perhaps Mr. Sevilla</p> <p>6 were actively involved in working on Sentinel matters</p> <p>7 post petition.</p> <p>8 Q Prior -- strike that.</p> <p>9 Did any of those individuals ever tell you</p> <p>10 that they were working for Sentinel on Highland</p> <p>11 Capital Management time?</p> <p>12 A No. And I -- they were full-time employees</p> <p>13 of Highland.</p> <p>14 Q Highland Capital Management has a code of</p> <p>15 ethics in effect today?</p> <p>16 A That's correct.</p> <p>17 Q And when did that policy take affect?</p> <p>18 A It's been in effect as long as I've known</p> <p>19 about it. I would think it goes back to -- I don't</p> <p>20 know exactly. It's been around as long as -- I think</p> <p>21 that they've always had a code.</p> <p>22 Q It's applied throughout the whole time that</p> <p>23 you've been involved with Highland, correct?</p> <p>24 A Absolutely, yes.</p> <p>25 Q Now, if you look at Exhibit -- Tab~13,</p>

<p>109</p> <p>1 which is Exhibit No. 157, I hope. 2 (Deposition Exhibit 157 was received and 3 marked for identification, as of this date.) 4 BY MR. CLUBOK: 5 Q Exhibit 157 is an email from Jason Post to 6 Sarah Goldsmith that copies a -- or attaches a copy of 7 the Highland Capital Management Compliance Manual. Do 8 you see that? 9 A Yes. 10 Q And this says that it was updated in 11 October of 2019. But presumably there was another 12 version of this before that. But this was the 13 operative one when you took over, correct? 14 A That's my understanding. I don't know that 15 it was updated after that during the case. I don't 16 recall it being so. Post exit we've updated it. 17 Q Yeah, I guess to be precise, I note on the 18 first page it says revised March 1, 2019? 19 A Yes. 20 Q Okay. But it was circulated, looks like, 21 at least in this exhibit, Exhibit 157, in October of 22 2019? 23 A Yes, correct. 24 Q And when was the bankruptcy? 25 A October 16, 2019.</p>	<p>111</p> <p>1 that to Mr. Surgent, correct? 2 A Correct. 3 Q As far as you know, was there any 4 disclosures made since the bankruptcy about the work 5 that was being done by the individuals you've 6 identified on behalf of Sentinel? 7 A Not to my knowledge. 8 Q Was there ever a disclosure that Matt 9 DiOrio was actually acting as a director of Sentinel? 10 A No. 11 Q Are you aware that even after the -- are 12 you aware that Mr. DiOrio directed transfers of funds 13 that were purportedly owned by Sentinel even after the 14 bankruptcy? 15 A Yes. I am now aware of that, yes. 16 Q Did you have any idea about that during the 17 time it was happening? 18 A No. I learned that through -- very 19 recently through the discovery that UBS did in this 20 litigation. 21 Q Can you briefly describe what your 22 understanding -- the understanding you've come to have 23 about Mr. DiOrio's movement of assets? 24 A Sure. As I said earlier, if we had known 25 that CDO Fund had this asset as an insurance policy,</p>
<p>110</p> <p>1 Q So this would have been recirculating the 2 compliance manual after the restructuring? 3 A That's correct, yes. 4 Q And fair to say that if you turn to page 23 5 of 36, which I think ends in Bates No. 65, is page 23 6 of the exhibit that is? 7 A Yes. 8 Q Bates labeled ends at 65, there's a whole 9 section on outside business activities and private 10 transactions. Do you see that? 11 A Yes. 12 Q And it says employees have to obtain the 13 approval of chief compliance officer prior to serving 14 as a director, officer, general partner or trustee or 15 consultant to any business, et cetera, et cetera. Do 16 you see that? 17 A Yes. 18 Q And also before accepting a second job, a 19 part-time job of any kind or engaging in any other 20 business outside the company. Do you see that? 21 A Yes. 22 Q Who was the chief compliance officer? 23 A Thomas Surgent. 24 Q Highland's Code of Ethics would have 25 required employees working for Sentinel to disclose</p>	<p>112</p> <p>1 we would have certainly zealously guarded it and tried 2 to recover on it for the benefit of the UBS which 3 would have -- we would have expected to reduce 4 exposure on the loss that the UBS had against CDO 5 Fund, SOHC, and included Highland. 6 What we've come to learn is that Mr. DiOrio 7 was involved, and perhaps others, with transferring 8 assets from Sentinel to other subsidiaries in the 9 ultimate beneficial ownership universe of Mr. Dondero 10 and Mr. Ellington, including significant amounts of 11 notes owed by CLO Hold Co to -- originally owed to CDO 12 Fund and then they had been transferred to Sentinel 13 and they moved those to, I believe, Bray Royale and 14 then another board note as well, purportedly moved 15 because they were worthless, which we know, in fact, 16 to be untrue, at least in terms of the assets that 17 those entities have. 18 But there were other diminutions of the 19 policy including extensive approvals by Mr. DiOrio for 20 completely -- what appear to be completely out of the 21 ordinary course of expenditures by Mr. Ellington in 22 significant and embarrassing numbers. 23 Q If you could look at Tab~18. That is an 24 exhibit that we're marking 158. 25 (Deposition Exhibit 158 was received and</p>


<p>113</p> <p>1 marked for identification, as of this date.)</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q Is this a document you had seen before UBS</p> <p>4 had uncovered it in discovery?</p> <p>5 A I don't recall unless I just looked at it</p> <p>6 in connection with this -- preparing here that --</p> <p>7 there's a similar one that DiOrio sends with respect</p> <p>8 to a different asset. But this looks to be on the</p> <p>9 Greenbriar asset.</p> <p>10 Q Yeah, if you look at the bottom of page</p> <p>11 three, you see in July -- let's see.</p> <p>12 A 2017.</p> <p>13 Q Actually I'm looking at the October 2017,</p> <p>14 you see Chism is -- Carter Chism is working with</p> <p>15 Lesley Thompson and JP Sevilla is copied on these</p> <p>16 documents, as is Matt DiOrio. Do you see that?</p> <p>17 A Yes.</p> <p>18 Q If you work your way up now, up the email</p> <p>19 towards present and just take a quick look through,</p> <p>20 you could see that there's references to wire</p> <p>21 transfers, wire instructions, et cetera. Do you see</p> <p>22 that?</p> <p>23 A Yes.</p> <p>24 (Deposition Exhibit 159 was received and</p> <p>25 marked for identification, as of this date.)</p>	<p>115</p> <p>1 A This is a CLO interest, preferred interest</p> <p>2 in the CLO Valhalla that was transferred from either</p> <p>3 SOHC or CDO Fund to Sentinel. And I think this is one</p> <p>4 of the ones that had some difficulty in completing the</p> <p>5 transfer. And he is making the claim on distributions</p> <p>6 that would have been made to Valhalla. Here it's</p> <p>7 \$1300 on behalf of Sentinel.</p> <p>8 Q Does Mr. DiOrio tell you anything at all</p> <p>9 about this work he was doing with -- you know, with</p> <p>10 the HCML copier in connection --</p> <p>11 A This would have been completely secret and</p> <p>12 kept from the directors, certainly from me, from</p> <p>13 anybody on the legal team at Pachulski or from the DSI</p> <p>14 folks. This alerted us to this whole Sentinel</p> <p>15 situation.</p> <p>16 Q Is there any obvious problem with Matt</p> <p>17 DiOrio authorizing wire transfers from this account to</p> <p>18 Sentinel during the bankruptcy?</p> <p>19 A I think it's -- I think it's a significant</p> <p>20 problem, yes.</p> <p>21 Q Can you explain why?</p> <p>22 A Well, to the extent that this policy is an</p> <p>23 asset that is controlled by the estate, this is</p> <p>24 something the estate is supposed to be made aware of.</p> <p>25 This policy would have benefited the estate by</p>
<p>114</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q If you go to the next Tab~19, which is</p> <p>3 Exhibit 159, you see a document dated January 10,</p> <p>4 2020. It says it's from M88O@hcmlp.com do you know</p> <p>5 who that is?</p> <p>6 A That's a copier.</p> <p>7 Q Okay. So from a copier --</p> <p>8 A Yeah, you'd scan the document and send it</p> <p>9 to yourself.</p> <p>10 Q Okay. And the document that -- then</p> <p>11 Mr. DiOrio at this time was still employed by Highland</p> <p>12 Capital Management?</p> <p>13 A Yes. This is -- you know, in the first</p> <p>14 quarter of '20, it's a case he works in the legal --</p> <p>15 it's post petition. He works in the legal department.</p> <p>16 Q And you could see on the next page, it</p> <p>17 appears to be -- he talks about how there's August and</p> <p>18 November '19 distributions on Valhalla CLO due to our</p> <p>19 purchase of the notes from BONY. Do you see that?</p> <p>20 A Yes.</p> <p>21 Q And Sentinel Reinsurance is sending this</p> <p>22 document. And it's signed by Matt DiOrio. Do you</p> <p>23 see?</p> <p>24 A Yes.</p> <p>25 Q Do you have any idea what this is about?</p>	<p>116</p> <p>1 having -- have assets with which to satisfy the</p> <p>2 subsidiary obligations to UBS and wouldn't have dug a</p> <p>3 continuing deeper hole for Highland employees hiding</p> <p>4 those assets.</p> <p>5 Q If you turn to Tab~21, which is a document</p> <p>6 we'll mark as Exhibit 160.</p> <p>7 (Deposition Exhibit 160 was received and</p> <p>8 marked for identification, as of this date.)</p> <p>9 BY MR. CLUBOK:</p> <p>10 Q You could see this is dated January 8,</p> <p>11 2021. Do you see that?</p> <p>12 A Yes.</p> <p>13 Q And you see there's still transfers being</p> <p>14 made. It says Ordering Customer: Highland Financial</p> <p>15 Corp. Did you know anything about this transfer?</p> <p>16 A No.</p> <p>17 Q Did you authorize it in any way?</p> <p>18 A I did not, no.</p> <p>19 Q Would this be problematic if somebody at</p> <p>20 Highland had authorized this?</p> <p>21 A Yeah. This was -- you know, as we were</p> <p>22 continuing to -- this is even -- this is even after we</p> <p>23 have -- maybe right before we settled with UBS, but we</p> <p>24 were certainly in the plan process and trying to</p> <p>25 figure out how we were going to resolve claims with</p>

<p>117</p> <p>1 UBS. I don't believe we'd actually settled yet. This 2 is extremely problematic and it's for material amounts 3 of money. 4 Q And by the way, Highland Finance Corp. is 5 100 percent subsidiary of Highland Financial Partners, 6 correct? 7 A That's my recollection. I don't remember 8 if it's direct or indirect. 9 Q If you want to glance just refresh your 10 recollection, Tab~42, you can just look behind the 11 blue sheet, there's an org chart. This was an 12 attachment to emails that were circulated at Highland 13 in May of 2020. And just to refresh your 14 recollection, take a look at HFP org chart. Go down. 15 A It appears to be a direct subsidiary. 16 Q Okay. So it's certainly the information 17 that was provided to you was that HFC was a direct 18 subsidiary, fully owned subsidiary of HFP, right? 19 A Yes. 20 Q Along with SOHC? 21 A Correct. 22 Q This information about this transfer from 23 Highland Financial Corp. to Sentinel would have been 24 very material to UBS, correct? 25 MR. MORRIS: Objection to form.</p>	<p>119</p> <p>1 Q Thank you. You've known about the decision 2 and the impending UBS judgment, correct? 3 A That's correct. 4 Q Did the funds ever make a claim on the 5 policy after the judgment was entered? 6 A Yes. 7 Q Approximately when did it do that? 8 A In 2021 at the -- sometime in the first or 9 second quarter, end of the first, beginning of second. 10 After we left, we didn't know about the policies, so 11 it's good to learn about it, look at it, make sure we 12 weren't going to somehow hurt the ability to draw on 13 it and then be able to use the funds to satisfy the 14 obligations to UBS. 15 Q The only reason you didn't make a claim on 16 the policy until the time that you did was because it 17 was actively concealed from you, correct? 18 A That's correct, yes. 19 (Deposition Exhibit 161 was received and 20 marked for identification, as of this date.) 21 BY MR. CLUBOK: 22 Q If you look at Tab~24, you'll see 23 Exhibit 161, which is the April 28, 2021 letter that 24 you wrote on behalf of CDO Fund officially making a 25 claim under the policy. Do you see that?</p>
<p>118</p> <p>1 MR. CLUBOK: Strike that. 2 BY MR. CLUBOK: 3 Q It would have been very material to the 4 litigation dispute between UBS and Highland, correct? 5 A It certainly would have been a significant 6 issue. 7 Q And it certainly -- 8 A And then post judgment are transferring 9 amounts of this size out of their bank accounts to 10 Sentinel. 11 Q This information that's reflected in 12 Exhibit 160 should have been provided to UBS 13 unquestionably, correct? 14 A In my opinion, yes. 15 Q And had you known about it, you would have 16 insisted it be provided to UBS, correct? 17 A Oh, absolutely, yes. 18 Q But it was kept from you at the time it 19 happened, correct? 20 A Correct. 21 Q The funds -- you've known about the UBS 22 judgment since even before you took over as 23 independent director, right? 24 A Well, the UBS decision I think which 25 predated the actual judgment.</p>	<p>120</p> <p>1 A That's correct. 2 Q And this was as early as you reasonably 3 could do after learning about the policy and getting 4 your arms around what had happened here; is that fair? 5 A That's right, yep. I'm just standing up. 6 Q That's okay. And you sent that letter 7 expecting that -- strike that. 8 You sent that letter with the demand that 9 Sentinel would pay under the policies so that you 10 could in turn pay that money to UBS? 11 A Yeah, looking at it, the first demand was 12 actually a couple of pages in. That's March 19th. 13 And we didn't get a satisfactory or any response to my 14 knowledge. So the first is an actual demand. So 15 that's almost starts the end of the first quarter. 16 And then the second letter is actually a reiteration 17 of our demand. 18 Q Thank you. So Exhibit 161 is a reiteration 19 of a demand you had made previously in March of 2021 20 seeking coverage under the policy on behalf of CDO 21 Fund, correct? 22 A Correct, and includes the -- a copy of the 23 judgment. 24 MR. MORRIS: Andy, not to be a pest. 25 Fifteen minutes.</p>

<p>121</p> <p>1 MR. CLUBOK: Yeah.</p> <p>2 BY MR. CLUBOK:</p> <p>3 Q I see. And if you turn to the back of</p> <p>4 Exhibit 161, you'll see a copy of that original demand</p> <p>5 that's dated March 19, 2021, but may have been sent on</p> <p>6 or about March 24, 2021; do you see that?</p> <p>7 A I'd be surprised if it wasn't sent on the</p> <p>8 day that it's dated.</p> <p>9 Q I think if you just look at the first page</p> <p>10 of 161, it says on March 24th, you sent the formal</p> <p>11 demand. So maybe it was over a weekend or some delay?</p> <p>12 A Yeah, perhaps. It may have had to be</p> <p>13 done -- oh, because it was certified mail.</p> <p>14 Q Oh, okay. So you did the demand but you</p> <p>15 had to organize it to be sent by certified mail and</p> <p>16 all of that?</p> <p>17 A Correct.</p> <p>18 Q Got it.</p> <p>19 A And I assume that's because it was a policy</p> <p>20 requirement.</p> <p>21 Q Right. And if you turn to the next tab,</p> <p>22 you see Exhibit 162.</p> <p>23 (Deposition Exhibit 162 was received and</p> <p>24 marked for identification, as of this date.)</p> <p>25</p>	<p>123</p> <p>1 Management was acting as a manager of Sentinel?</p> <p>2 A That's incorrect. I did not know it</p> <p>3 because it's not something that was true.</p> <p>4 Q Well, it's not officially the case that</p> <p>5 Highland Capital Management was acting as manager for</p> <p>6 Sentinel. Is that what you mean?</p> <p>7 A I only deal in things that are official.</p> <p>8 Q But you do know that employees of Highland</p> <p>9 Capital Management, who you've since fired, were</p> <p>10 effectively managing Sentinel?</p> <p>11 A I know that now, yes.</p> <p>12 MR. MORRIS: Object to form of to question.</p> <p>13 BY MR. CLUBOK:</p> <p>14 Q There was never an investment management</p> <p>15 agreement though with Sentinel, correct?</p> <p>16 A That's correct.</p> <p>17 Q Or with SAS?</p> <p>18 A I don't know.</p> <p>19 Q Was there a shared service agreement with</p> <p>20 those two entities as far as you know?</p> <p>21 A Oh, did Highland have one with SAS? Not to</p> <p>22 my knowledge. Definitely didn't have one with</p> <p>23 Sentinel. And to my knowledge, no agreements with --</p> <p>24 shared service or any other type of agreement with SAS</p> <p>25 or -- or Sentinel --</p>
<p>122</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q That's the response you -- the first formal</p> <p>3 written response you received in response to your</p> <p>4 demand; is that correct?</p> <p>5 A Yes.</p> <p>6 Q So that was the initial response,</p> <p>7 Exhibit 162, correct?</p> <p>8 A Yes, I believe so.</p> <p>9 Q And now if you turn to next document, you</p> <p>10 see Exhibit 163, behind Tab~26.</p> <p>11 A Yes.</p> <p>12 (Deposition Exhibit 163 was received and</p> <p>13 marked for identification, as of this date.)</p> <p>14 BY MR. CLUBOK:</p> <p>15 Q This is a letter that the director sent to</p> <p>16 you personally and at Highland Capital Management as</p> <p>17 opposed to CDO Fund, correct?</p> <p>18 A Correct.</p> <p>19 Q And it says here, "We understand that</p> <p>20 you're the person responsible for keeping up-to-date</p> <p>21 records and inventory of the assets which are owned by</p> <p>22 Sentinel and to which Highland Capital Manager [sic]</p> <p>23 acts as a manager." Do you see that?</p> <p>24 A Yes.</p> <p>25 Q Did you know that Highland Capital</p>	<p>124</p> <p>1 Q Do you see --</p> <p>2 A -- other than of course the policy.</p> <p>3 Q Do you see on Exhibits [sic] 163 where it</p> <p>4 says, "Consequently, attached as Schedule 1 to this</p> <p>5 letter is list of assets owned by Sentinel, which we</p> <p>6 understand to be managed by HCM"?</p> <p>7 A Yes.</p> <p>8 Q Did you -- did you know that -- or did you</p> <p>9 believe that HCM was supposed to be managing those</p> <p>10 assets on behalf of Sentinel?</p> <p>11 A It's just certainly not the case.</p> <p>12 Q It was not the case for you, but --</p> <p>13 A Correct.</p> <p>14 Q -- you have seen evidence that other</p> <p>15 employees of HCM, the ones that you've identified</p> <p>16 previously and have been fired, had been managing</p> <p>17 these assets in various ways; is that fair?</p> <p>18 MR. MORRIS: Object to the form.</p> <p>19 A They certainly were involved in dealing</p> <p>20 with different aspects of the assets. I don't know if</p> <p>21 you call managing them or reporting on them or</p> <p>22 transferring them.</p> <p>23 BY MR. CLUBOK:</p> <p>24 Q If you look at Tab~28, a document that's</p> <p>25 been marked as Exhibit 164.</p>

<p>125</p> <p>1 (Deposition Exhibit 164 was received and 2 marked for identification, as of this date.) 3 BY MR. CLUBOK: 4 Q You see a -- another letter from Collas 5 Crill, which was the -- I'm sorry. A letter from 6 Walkers that was Highland's counsel, back to the 7 counsel representing Sentinel, correct? 8 A Yes. 9 Q And in this letter -- I assume you 10 authorized this letter before it went out? 11 A I don't recall it specifically, but that 12 would be the typical procedure. Not a lot goes out 13 without me authorizing it. 14 Q You see in the third or fourth paragraph, 15 it notes that John Dondero and Ellington were 16 understood to be the beneficial owners of Sentinel? 17 A Yes. 18 Q And that's -- and that's certainly what you 19 understood at the time and continue to understand, 20 correct? 21 A Correct. 22 Q In this letter, it advises Sentinel that 23 there was a TRO, the TRO that's been entered in this 24 case, correct? 25 A That's correct, yes.</p>	<p>127</p> <p>1 policy was written, it's hard to conceive of any 2 proper basis for denial of coverage." Do you see 3 that? 4 A Yes. 5 Q Fair to say that based on information 6 you've uncovered, you believed that CDO Fund and 7 Sentinel were effectively under common control in 8 approximately August of 2017 when the policy was 9 written? 10 A Yes, no doubt. 11 Q And that common control was ultimately Jim 12 Dondero? 13 A Ultimately, yes. And Ellington. He was 14 ultimately a beneficial owner, material amounts. 15 Q Yes. With Jim Dondero having the 16 controlling interest in the control group that he 17 formed with Ellington? 18 A And Ellington worked for Dondero. 19 Q Yeah. If you could turn to Tab~35. 20 A (Witness complies.) 21 (Deposition Exhibit 167 was received and 22 marked for identification, as of this date.) 23 BY MR. CLUBOK: 24 Q Tab~35 is another email exchange that was 25 in early February 2021. Do you see that?</p>
<p>126</p> <p>1 Q And your lawyers ask Sentinel to -- if it 2 believes its entitled to receive any amounts, then 3 effectively provide you with the information to 4 support that, correct? 5 A That's correct. 6 Q Did Sentinel ever respond by providing any 7 information that justifies their claim over the assets 8 that are currently being restrained by the court? 9 A Not that I recall. We certainly gave them 10 a lot of information about values over time and it 11 worked out -- what we believed to be with UBS a 12 satisfactory resolution of issues related to the 13 policy. But they never could justify that the 14 demand assets were theirs, that they otherwise 15 hadn't been transferred to them. 16 Q If you turn to Tab~29, Exhibit 165. 17 (Deposition Exhibit 165 was received and 18 marked for identification, as of this date.) 19 BY MR. CLUBOK: 20 Q You see another letter from your lawyers to 21 Sentinel's lawyers in which you note, at the bottom of 22 paragraph one, you say -- your lawyers say, "In 23 circumstances where the event covered by the policy is 24 plainly crystallized and CDO Fund and Sentinel were 25 effectively under common control at the time that the</p>	<p>128</p> <p>1 A Yes. 2 Q And this is when you were trying to have 3 Matt DiOrio help you figure out what was going within 4 with the Greenbriar shares we talked about before? 5 A Yes, yep. 6 Q If you look at page three, the page that 7 ends -- sorry. Tab 30. Did I mark that one as an 8 exhibit? No. We're going to go back to Tab~34, and 9 I'll mark that one as Exhibit 166. 10 (Deposition Exhibit 166 was received and 11 marked for identification, as of this date.) 12 BY MR. CLUBOK: 13 Q And in Exhibit 166, you can see on page 14 three -- Do I have the right document here? 15 Yeah, on page three -- sorry. So 16 Exhibit 166 is an email exchange in late January of 17 2021 with Matt DiOrio and Mr. Romey and Mr. DiOrio. 18 And you see where Mr. DiOrio on page three says he 19 doesn't know the details about the account for CDO 20 Fund that had been receiving cash distributions for 21 Greenbriar. Do you see that? 22 A Yes. 23 Q But Mr. DiOrio at the time was director of 24 Sentinel who knew all about the transaction for 25 Sentinel, correct?</p>

<p>129</p> <p>1 A We know that now, yes.</p> <p>2 Q So this was another example of a false</p> <p>3 statement being made to people -- at least to people</p> <p>4 who were working for you who would try to get</p> <p>5 information from Mr. DiOrio, correct?</p> <p>6 A That is undoubtedly correct.</p> <p>7 Q And now if you turn to Tab~35, Exhibit 167.</p> <p>8 You'll see where Mr. -- if you look at the bottom, the</p> <p>9 first email, like at the last page.</p> <p>10 A (Witness complies.) Yep.</p> <p>11 Q There's emails that refer to DiOrio working</p> <p>12 on tracking down the physical certificate of</p> <p>13 Greenbriar shares. Do you see that?</p> <p>14 A Yes.</p> <p>15 Q And you can continue up and there's lots of</p> <p>16 questions. And then on page that's been Bates labeled</p> <p>17 3373, it says, finally -- DiOrio says, "My</p> <p>18 understanding is they were" -- who is the intended</p> <p>19 recipient of the transfer initiated by Carter? This</p> <p>20 is all talking about Greenbriar. It says, "My</p> <p>21 understanding is they were transferred to Maples FS in</p> <p>22 Cayman as custodian for Sentinel Reinsurance Limited.</p> <p>23 When delivery of the shares was not taken by Maples,</p> <p>24 the certificates seemed to have been lost which is</p> <p>25 what we were working with State Street to remedy." Do</p>	<p>131</p> <p>1 Management?</p> <p>2 A Yes.</p> <p>3 Q January 2021?</p> <p>4 A Yes.</p> <p>5 Q And when he's point blank asked about</p> <p>6 visibility in the Sentinel Reinsurance, who owns them,</p> <p>7 what do they do, et cetera, he flatly lies to you,</p> <p>8 correct?</p> <p>9 A To Greg Demo, my lawyer, yes.</p> <p>10 Q Or yeah, let me say that again.</p> <p>11 So Mr. Demo, who is your lawyer, and</p> <p>12 Mr. Klos are asking Mr. DiOrio in this email exchange</p> <p>13 point blank if he has any visibility in the Sentinel</p> <p>14 Reinsurance and who owns them what they do, et cetera,</p> <p>15 correct?</p> <p>16 A I think it would be more fair to say that</p> <p>17 Demo and Romey -- because we were really using --</p> <p>18 relying on outside counsel and outside consultants to</p> <p>19 do this digging. Because when we started coming</p> <p>20 across this, we wanted to make sure we left no stone</p> <p>21 unturned. And we didn't blindly trust anybody, so we</p> <p>22 were working through the Highland staff.</p> <p>23 But I think it would be more fair to say</p> <p>24 Demo and with the assistance of Romey were doing this</p> <p>25 investigation.</p>
<p>130</p> <p>1 you see that?</p> <p>2 A Yes.</p> <p>3 Q And if you go to next email up the chain</p> <p>4 turn the page to 3372, Mr. Demo says to Mr. DiOrio,</p> <p>5 "Do we have any visibility into who Sentinel</p> <p>6 Reinsurance is? Who owns them, what do they do?" Do</p> <p>7 you see that?</p> <p>8 A Yes.</p> <p>9 Q January 27, 2021, right?</p> <p>10 A Yes.</p> <p>11 Q And Mr. DiOrio responds, "It's a</p> <p>12 non-debtor, non-affiliate reinsurance company and I do</p> <p>13 not know who or how it's owned." Do you see that?</p> <p>14 A Yes.</p> <p>15 Q Mr. DiOrio was a director of Sentinel at</p> <p>16 the time he's telling you this, right?</p> <p>17 A That's correct.</p> <p>18 Q And he's a lawyer who is working for you at</p> <p>19 Highland Capital Management?</p> <p>20 A Actually, he's not a lawyer. He worked in</p> <p>21 the legal department and he was Ellington's friend.</p> <p>22 And he worked in the legal department, but he was not</p> <p>23 lawyer.</p> <p>24 Q Okay. But Mr. DiOrio was working in the</p> <p>25 legal department for you at Highland Capital</p>	<p>132</p> <p>1 Q Okay. So Mr. Demo, who is your outside</p> <p>2 counsel, at your request, was trying to figure out</p> <p>3 what Sentinel Reinsurance was, right?</p> <p>4 A That's correct.</p> <p>5 Q And he was emailing with Mr. DiOrio who was</p> <p>6 then a director of Sentinel Insurance [sic] and a</p> <p>7 friend of Mr.~Ellington's, correct?</p> <p>8 A That's correct, yes.</p> <p>9 Q And Mr. DiOrio at time worked in the</p> <p>10 Highland Capital Management legal department and</p> <p>11 ultimately reported up to you, correct?</p> <p>12 A Correct.</p> <p>13 Q And in this email exchange that we've</p> <p>14 marked as Exhibit 167, Mr. DiOrio simply lies about</p> <p>15 what he knows about Sentinel Reinsurance, correct?</p> <p>16 A That's correct.</p> <p>17 Q Okay. All right.</p> <p>18 MR. CLUBOK: Let's go off the record.</p> <p>19 THE VIDEOGRAPHER: Stand by. We are going</p> <p>20 off the record. The time is 5:00 p.m.</p> <p>21 (At 5:00 p.m. a recess was taken.)</p> <p>22 (At 5:04 p.m. the deposition resumes.)</p> <p>23 THE VIDEOGRAPHER: We're going back on the</p> <p>24 record. The time is 5:04 p.m.</p> <p>25</p>

<p>133</p> <p>1 BY MR. CLUBOK:</p> <p>2 Q Mr. Seery, it's true that Highland Capital</p> <p>3 Management has control of Multi-Strat by virtue of its</p> <p>4 two roles; one, the indirect 100 percent owner of</p> <p>5 Multi-Strat's general partner; and two, as</p> <p>6 Multi-Strat's investment manager, correct?</p> <p>7 A I believe that's fair. Certainly as</p> <p>8 investment manager give basically full control over</p> <p>9 Multi-Strat, yes.</p> <p>10 Q And Highland Capital Management has control</p> <p>11 of CDO Fund as a director and direct owner of CDO</p> <p>12 Fund's general partner, correct?</p> <p>13 A Yes, CDO Fund, yes.</p> <p>14 Q So you are, obviously, aware that there's a</p> <p>15 TRO that's currently in place that we're asking the</p> <p>16 Court to extend, correct?</p> <p>17 A Yes.</p> <p>18 Q If the Court had not entered that</p> <p>19 injunction, it's fair to say that Highland Capital</p> <p>20 Management would have made or caused to make</p> <p>21 additional transfers to Sentinel of assets that we</p> <p>22 know were related to this ATE policy we've been</p> <p>23 discussing?</p> <p>24 A Yeah, I think that's fair. Certainly the</p> <p>25 redeemed interests out of Multi-Strat would have been</p>	<p>135</p> <p>1 Q And that's because your understanding is</p> <p>2 UBS has a claim to whatever is owed under the policy,</p> <p>3 correct?</p> <p>4 A Well, UBS has a claim against CDO Fund that</p> <p>5 exceeds the policy limit and the policies should have</p> <p>6 been paid.</p> <p>7 Q Okay. Thank you very much.</p> <p>8 MR. CLUBOK: I appreciate the additional</p> <p>9 time. That's -- we do have some additional questions</p> <p>10 that relate to the New York action and, pursuant to</p> <p>11 the discussions that John and I have had, we'll pick</p> <p>12 up and conclude that deposition another time.</p> <p>13 MR. MORRIS: Okay. Thank you very much.</p> <p>14 THE VIDEOGRAPHER: Okay. Let's go off the</p> <p>15 record.</p> <p>16 MR. CLUBOK: Thanks.</p> <p>17 THE VIDEOGRAPHER: This marks the end of</p> <p>18 the deposition of James Seery, Jr. We're going off</p> <p>19 the record at 5:07 p.m.</p> <p>20 THE COURT REPORTER: Counsel, your orders</p> <p>21 for the record.</p> <p>22 MR. MORRIS: Regular delivery is fine, no</p> <p>23 rough draft.</p> <p>24 MR. CLUBOK: Daily, Rough draft, Realtime.</p> <p>25 (Time noted: 5:07 p.m.)</p>
<p>134</p> <p>1 paid in full. I don't believe any -- there would have</p> <p>2 been any assets transferred out of CDO Fund, certainly</p> <p>3 not without my -- the ones that we saw earlier by</p> <p>4 Mr. DiOrio were without my knowledge. We wouldn't</p> <p>5 have transferred out of -- out of CDO Fund because we</p> <p>6 wouldn't have had an obligation to. But on the</p> <p>7 redeemed funds, we would have had an obligation to.</p> <p>8 Q Okay. So to be clear, absent the TRO,</p> <p>9 Highland Capital Management would have caused the</p> <p>10 funds that are currently being restrained by the TRO</p> <p>11 to have been transferred to Sentinel, correct?</p> <p>12 A Yes.</p> <p>13 Q And it is only with a continuing injunction</p> <p>14 preventing that unless there's a further order by the</p> <p>15 Court -- strike that.</p> <p>16 It is only the continuing injunction that</p> <p>17 prevents Highland Capital Management from being forced</p> <p>18 to transfer those assets to Sentinel, correct?</p> <p>19 A I think at least in part that that's</p> <p>20 correct. In other part, we've also made a demand on</p> <p>21 behalf of CDO Fund for the policy. And it has not</p> <p>22 been paid. So while the transfer from Multi-Strat is</p> <p>23 not from CDO Fund, it certainly would have caused me</p> <p>24 pause that I'd be turning over money to Sentinel when</p> <p>25 Sentinel is not paying on the policy.</p>	<p>136</p> <p>1 CERTIFICATE</p> <p>2 STATE OF NEW YORK)</p> <p>3 : ss</p> <p>4 I, Angela M. Shaw-Crockett, a Certified</p> <p>5 Court Reporter, Certified Realtime Reporter,</p> <p>6 Registered Merit Reporter and Notary Public within and</p> <p>7 for the States of New York, New Jersey and</p> <p>8 Connecticut, do hereby certify:</p> <p>9 That JAMES SEERY, JR., the witness whose</p> <p>10 deposition is herein before set forth, was duly sworn</p> <p>11 by me and that such deposition is a true record of the</p> <p>12 testimony given by such witness; that reading and</p> <p>13 signing was not discussed.</p> <p>14 I further certify that I am not related to</p> <p>15 any of the parties to this action by blood or marriage</p> <p>16 and that I am in no way interested in the outcome of</p> <p>17 this matter.</p> <p>18 In witness whereof, I have hereunto set my</p> <p>19 hand this 8th day of August, 2022.</p> <p>20 </p> <p>21 -----</p> <p>22 ANGELA M. SHAW-CROCKETT, CCR, CRR, RMR, CSR</p> <p>23 LICENSE NO. XI00218400</p> <p>24</p> <p>25</p>